

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

GREE, INC.,	) (	CIVIL ACTION NOS.
	) (	2:19-CV-70-JRG-RSP
PLAINTIFFS,	) (	2:19-CV-71-JRG-RSP
	) (	
VS.	) (	
	) (	MARSHALL, TEXAS
SUPERCELL OY,	) (	SEPTEMBER 14, 2020
	) (	8:50 A.M.
DEFENDANTS.	) (	

TRANSCRIPT OF JURY TRIAL

VOLUME 5 - MORNING SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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18 produced on a CAT system.)  
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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Counsel, are you prepared to read into the record those items from the list of pre-admitted exhibits used during Friday's portion of the trial?

MR. MOORE: Yes, Your Honor. I'd like to request if our colleague, Ms. Kasey Koballa could come to the podium and do that for us.

THE COURT: That would be fine.

MR. MOORE: Thank you, Your Honor.

MS. KOBALLA: Good morning, Your Honor. Plaintiff's list of exhibits admitted on Friday is PTX-16, PTX-19, PTX-111, PTX-133, PTX-143, PTX-144, PTX-145, PTX-146, PTX-153, PTX-164, PTX-165, PTX-166, PTX-167, PTX-475, PTX-480, PTX-591, PTX-593, PTX-594, PTX-598, PTX-599, PTX-600, PTX-601, PTX-602, PTX-660, PTX-661, PTX-662, PTX-663, PTX-12, and PTX-14.

THE COURT: All right. Thank you for that rendition, counsel.

Is there any objection to the same from the Defendants?

MR. DACUS: There is no objection, Your Honor.

THE COURT: Does the Defendant have a similar

08:53:00 1 offering to make?

08:53:02 2 MR. DACUS: We do, Your Honor.

08:53:04 3 MS. KOBALLA: Thank you, Your Honor.

08:53:05 4 THE COURT: Please proceed.

08:53:07 5 MR. MCMICHAEL: Good morning, Your Honor.

08:53:11 6 Defendant's exhibits to be admitted from Friday are DX-200,

08:53:16 7 DX-217, DX-221, DX-1214, DX-1215, DX-1217, DX-1218,

08:53:30 8 DX-1226B, DX-1229, DX-1229B, DX-1231, PTX-150 and PTX-167.

08:53:45 9 THE COURT: All right. Thank you for that

08:53:47 10 rendition as well.

08:53:48 11 Is there objection to the same from the Plaintiff?

08:53:51 12 MR. MOORE: We have no objection, Your Honor.

08:53:53 13 THE COURT: Thank you, counsel.

08:53:54 14 Mr. Moore, is the Plaintiff prepared to call their  
08:53:56 15 next witness?

08:53:57 16 MR. MOORE: Yes, Your Honor, and Ms. Smith will do  
08:53:59 17 that.

08:54:00 18 THE COURT: All right.

08:54:01 19 MR. MOORE: If that's okay.

08:54:02 20 THE COURT: Is there anything we need to take up  
08:54:05 21 before I bring in the jury from either side?

08:54:07 22 MR. MOORE: Not from the Plaintiff.

08:54:08 23 MR. DACUS: Not from the Defendant, Your Honor.

08:54:10 24 THE COURT: Let's bring in the jury, please,  
08:54:12 25 Mr. Fitzpatrick.

08:54:17 1 COURT SECURITY OFFICER: All rise.

08:54:19 2 (Jury in.)

08:54:31 3 THE COURT: Welcome back, ladies and gentlemen.

08:54:42 4 Please be seated.

08:54:43 5 We will continue, members of the jury, with the  
08:54:49 6 Plaintiff's case-in-chief. We finished some witnesses by  
08:54:53 7 deposition on Friday, and we'll now proceed to have  
08:54:57 8 Plaintiff call their next witness.

08:54:59 9 Mr. Moore, Plaintiff may call its next witness.

08:55:02 10 MS. SMITH: Your Honor, the Plaintiff calls  
08:55:08 11 Dr. David Neal.

08:55:08 12 THE COURT: All right. Dr. Neal, if you'll come  
08:55:11 13 forward.

08:55:11 14 Ms. Smith, you may go to the podium.

08:55:17 15 (Witness sworn.)

08:55:18 16 THE COURT: Please come around, sir. Have a seat  
08:55:27 17 at the witness stand.

08:55:36 18 MS. SMITH: Your Honor, may I hand the witness his  
08:55:41 19 binder?

08:55:41 20 THE COURT: You may.

08:55:45 21 THE WITNESS: Thank you.

08:55:47 22 COURT SECURITY OFFICER: Yes, sir.

08:55:49 23 THE COURT: All right. Ms. Smith, you may proceed  
08:55:51 24 with your direct examination.

08:55:53 25 MS. SMITH: Thank you, Your Honor.

08:55:53 1 DAVID NEAL, PH.D., PLAINTIFF'S WITNESS, SWORN

08:55:53 2 DIRECT EXAMINATION

08:55:54 3 BY MS. SMITH:

08:55:54 4 Q. Good morning, Dr. Neal.

08:56:06 5 A. Good morning.

08:56:06 6 Q. Dr. Neal, if you would introduce yourself to the jury,  
08:56:09 7 please.

08:56:09 8 A. Certainly. Good morning. My name is Dr. David Neal.

08:56:13 9 Q. And Dr. Neal, what is your role in this case?

08:56:16 10 A. I am a survey expert, and so I was retained by GREE to  
08:56:22 11 run two surveys. One of them was of players of Clash of  
08:56:27 12 Clans, looking at that copy layout feature that we heard  
08:56:30 13 Dr. Akl talk a lot about on Friday. And the second one was  
08:56:34 14 of Clash Royale, and that one was looking at the card  
08:56:37 15 donation feature that we heard about on Friday.

08:56:39 16 Q. And, Doctor, if you would give the jurors a brief  
08:56:44 17 summary of your academic background, please.

08:56:47 18 A. Certainly. So I did my undergraduate training and then  
08:56:52 19 a Ph.D. in Australia. You can probably tell from my  
08:56:55 20 strange accent that I didn't grow up here. But I moved to  
08:56:59 21 the U.S. about 15 years ago and became a U.S. citizen but  
08:57:03 22 did my initial training in Australia and then did a  
08:57:07 23 postdoctoral fellowship and more university training at  
08:57:07 24 Duke University in North Carolina.

08:57:09 25 Q. Where do you currently work?

08:57:12 1 A. So, currently, I work at Catalyst Behavioral Sciences,  
08:57:17 2 and then I also have a position back at Duke University.

08:57:20 3 Q. Let's start with Catalyst. What's your role at  
08:57:23 4 Catalyst Behavioral Sciences?

08:57:26 5 A. I am the managing partner, and I also founded the  
08:57:29 6 company.

08:57:30 7 Q. And what does Catalyst do?

08:57:31 8 A. So I would describe it really as a small business.  
08:57:36 9 It's a small research consulting company. So we do  
08:57:40 10 research studies. Most of them are surveys, like the one  
08:57:44 11 I'm going to talk to you about today. And sometimes  
08:57:47 12 they're for big companies; sometimes they're for legal  
08:57:50 13 cases like this one. And I also do a lot of work in  
08:57:53 14 health.

08:57:53 15 Q. You mentioned big companies. Can you give the jurors  
08:57:57 16 an example of the types of companies you work for?

08:57:59 17 A. Sure. So a few quick examples would be I've done a lot  
08:58:04 18 for Procter & Gamble. So they own lots of brands that we  
08:58:09 19 probably all use; things like Tide detergent and Bounty  
08:58:15 20 paper towel and Gillette razors. I've also done a lot of  
08:58:19 21 work for Intel and for Microsoft.

08:58:22 22 Q. And what type of work did you do for the government?

08:58:25 23 A. So I've done a lot of work for the U.S. Army, and  
08:58:30 24 that's -- most of that work is focused on soldier health  
08:58:33 25 and wellbeing, so basically keeping soldiers fit and



08:58:37 1 healthy and sleeping enough, which is a big -- big deal in  
08:58:42 2 terms of maintaining readiness.

08:58:44 3 Q. Doctor, what's your role at Duke University?

08:58:46 4 A. So I am an executive in residence. And, basically,  
08:58:51 5 what that means is I help professors in a bunch of  
08:58:54 6 different areas on projects -- most of them actually are to  
08:58:58 7 do with smartphone apps like the ones we're talking about  
08:59:01 8 in this case.

08:59:01 9 Q. You -- you say that you help professors. Have you also  
08:59:06 10 been a professor yourself?

08:59:07 11 A. I was, yes. Before I started Catalyst, I was a  
08:59:10 12 professor at the University of Southern California. And so  
08:59:15 13 when I was a professor, I taught undergraduates and  
08:59:20 14 graduate students. And a lot of that work was -- was  
08:59:23 15 teaching them how to design good surveys like the surveys  
08:59:26 16 we'll be hearing about today.

08:59:27 17 Q. Now, Doctor, on the bottom of the screen in front of  
08:59:31 18 you, I see it mentions 24 peer-reviewed articles. Tell  
08:59:35 19 us -- tell the jury a little bit about that, please.

08:59:38 20 A. Sure. So peer-review is this -- kind of very rigorous,  
08:59:42 21 difficult process that when an academic writes a paper and  
08:59:46 22 they want to get it published, they send the paper off to a  
08:59:48 23 journal, and then the journal finds other experts to send  
08:59:52 24 it to, to basically try and pick it apart and find any  
08:59:56 25 fault or flaws in it.

08:59:58 1 And it's only if that -- those other experts say,  
09:00:01 2 okay, this is -- this has no flaws in it, that the paper  
09:00:04 3 will be allowed to be published. So that's the peer-review  
09:00:08 4 process. And 24 of my papers have passed through that --  
09:00:13 5 that peer-review process.

09:00:15 6 MS. SMITH: Your Honor, at this time, GREE tenders  
09:00:18 7 Dr. Neal as an expert in survey methodology.

09:00:23 8 THE COURT: Is there objection?

09:00:24 9 MR. KOHM: No objection, Your Honor.

09:00:25 10 THE COURT: All right. Then, without objection,  
09:00:26 11 the witness will be recognized by the Court as an expert in  
09:00:29 12 that designated field.

09:00:30 13 MS. SMITH: Thank you, Your Honor.

09:00:31 14 THE COURT: Please proceed.

09:00:35 15 Q. (By Ms. Smith) Dr. Neal, are you being compensated for  
09:00:37 16 your work as an expert in this case?

09:00:39 17 A. I -- I am. I'm being paid my standard hourly rate  
09:00:43 18 which is \$585.00.

09:00:44 19 Q. And is your compensation in this case in any way tied  
09:00:50 20 to the outcome of this matter?

09:00:51 21 A. No, it's not. So all of my conclusions are linked to  
09:00:55 22 the hard numbers that come out of the surveys that I'll  
09:00:57 23 show you, and I get compensated regardless of how the case  
09:01:00 24 turns out.

09:01:01 25 Q. And, Doctor, you and I have actually never had the

09:01:04 1 pleasure of working together, have we?

09:01:05 2 A. We have not.

09:01:06 3 Q. Have you ever worked with the law firm of Kilpatrick  
09:01:09 4 Townsend, my colleagues over at counsel table?

09:01:11 5 A. I have not worked with any of the lawyers -- the lead  
09:01:15 6 lawyers on this case. I have worked with another group of  
09:01:17 7 Kilpatrick Townsend that does trademark work.

09:01:20 8 So, you know, as you know, this case is about  
09:01:23 9 patents. There's another group of Kilpatrick Townsend that  
09:01:25 10 does trademark work, and I've worked with them, I would  
09:01:29 11 guess, 50 times over the past 10 years; something like  
09:01:32 12 that.

09:01:32 13 Q. Doctor, if someone says 50 times, that sounds -- that  
09:01:35 14 sounds like a lot -- a lot of the cases for the same firm.  
09:01:39 15 What would you say?

09:01:40 16 A. Not really. To me it's a compliment, and that's fairly  
09:01:44 17 typical. So I've worked a lot for many different law  
09:01:47 18 firms. Earlier I mentioned Procter & Gamble. I've been  
09:01:51 19 doing research for them for almost 20 years. So, to me,  
09:01:55 20 it's a compliment if people ask you to come back and do  
09:01:58 21 more research.

09:01:59 22 Q. And in that 20 years, have you ever, prior to this  
09:02:02 23 case, worked for my client, GREE?

09:02:04 24 A. I have not.

09:02:04 25 Q. Now, Dr. Neal, are there basic rules that must be

09:02:12 1 followed when designing a survey?

09:02:13 2 A. There are. And you can see some of them on the screen  
09:02:17 3 here. And one way to think about this is the -- the main  
09:02:20 4 goal with designing a good survey is to make sure it's  
09:02:23 5 really neutral and even-handed. That's very important.

09:02:27 6 So there are some rules of the road to try and get  
09:02:30 7 to that outcome. You can see some of the main ones on the  
09:02:33 8 screen here.

09:02:34 9 So the first one is the idea of an unbiased  
09:02:38 10 sample. And, basically, what that means is you've got to  
09:02:41 11 be really careful to make sure you're talking to the right  
09:02:44 12 people.

09:02:44 13 So, in this case, obviously, we want to talk to  
09:02:47 14 people in the U.S. who are playing Clash of Clans on their  
09:02:51 15 phone or on a tablet, or Clash Royale.

09:02:54 16 So what I did was in the survey, I created this  
09:02:59 17 little test. And so if you started the survey and you  
09:03:02 18 said, yeah, I've played Clash of Clans, I showed you images  
09:03:05 19 from Clash of Clans and images from different other games,  
09:03:11 20 and you have to get a perfect score in saying, yes, this  
09:03:14 21 one is from Clash of Clans, this one is not.

09:03:16 22 So that's how I could be a hundred percent sure  
09:03:19 23 that everyone who said -- put up their hand essentially in  
09:03:22 24 the survey and said, yes, I'm a Clash of Clans player or a  
09:03:26 25 Clash Royale player, I knew for sure that they were.

09:03:28 1 That's the unbiased sample.

09:03:31 2 Q. And, Dr. Neal, it looks like your second rule of the  
09:03:33 3 road here is double-blind data collection. Can you explain  
09:03:37 4 to the jurors what that means?

09:03:38 5 A. Sure. So this is really -- and the picture at the  
09:03:41 6 bottom is kind of capturing this idea of double-blind.

09:03:44 7 Basically, what it means is the people who are  
09:03:46 8 taking your survey, they shouldn't know kind of the back  
09:03:50 9 story of what the whole survey is about. So they shouldn't  
09:03:53 10 know in this case that there's litigation involved or  
09:03:57 11 anything like that.

09:03:58 12 But the second, the double-blind piece, is,  
09:04:02 13 whoever is asking the questions, they should also not  
09:04:04 14 really know what's going on.

09:04:05 15 So the way we do that is we program the survey on  
09:04:09 16 a computer. So you're actually taking the survey through a  
09:04:14 17 web link, and then there's no human element involved.

09:04:18 18 Obviously, the computer puts the question --  
09:04:21 19 obviously, it asks you, you know, what is your gender, it  
09:04:24 20 asks it exactly the same way. And it doesn't know, you  
09:04:27 21 know, anything about Supercell or GREE. So we kind of  
09:04:30 22 remove the human element from the asking of the question.

09:04:33 23 Q. Doctor, under No. 3, you say randomization of response  
09:04:39 24 options. Why is that important?

09:04:41 25 A. Okay. So this is really the idea that when you're

09:04:45 1 going through a survey, let -- let's say I was asking you  
09:04:49 2 what your favorite color was, and then I said, what's your  
09:04:53 3 favorite color, and I listed five of them.

09:04:55 4 Sometimes some people, just because they're kind  
09:04:58 5 of bored, will just click on the first one that's in the  
09:05:03 6 list, but that would create a bias if we didn't make the  
09:05:07 7 list -- we didn't change the list for every person who goes  
09:05:09 8 through the survey.

09:05:10 9 So here in this survey, we randomize all the  
09:05:12 10 options as they appear under a question. So one person  
09:05:15 11 goes through, and they're in one order. The next person  
09:05:18 12 goes through, and they're in a different order. And that  
09:05:21 13 removes that bias that might come from people just clicking  
09:05:24 14 the first thing they happen to read.

09:05:25 15 Q. Doctor, moving on to your fourth and -- and last rule  
09:05:29 16 of the road, non-leading questions. What -- why is that  
09:05:34 17 important?

09:05:34 18 A. Well, this is important because we want to make sure  
09:05:38 19 we're asking questions in a way that's very neutral and  
09:05:41 20 even-handed. So you have to be very careful with language  
09:05:47 21 to make sure you're not kind of suggesting to the person  
09:05:50 22 taking the survey what a good answer might be or a bad  
09:05:53 23 answer. So it's really just about being neutral and fair  
09:05:56 24 in the way you ask the question.

09:05:57 25 Q. And, Dr. Neal, did you use any or all of these four

09:06:02 1 rules for surveys in the surveys that you conducted in this  
09:06:06 2 case?

09:06:06 3 A. Yes, I used all of these in my surveys that I'm going  
09:06:10 4 to talk to you about today, just as I would in any of my  
09:06:14 5 peer-reviewed scientific articles.

09:06:16 6 Q. Now, Doctor, at a -- at a really high level, if you  
09:06:21 7 could give the jurors a summary of exactly how you went  
09:06:25 8 about designing the surveys in this case.

09:06:28 9 A. Sure. So, as I mentioned earlier, I did two surveys  
09:06:32 10 overall. One of them was of Clash Royale. You can see  
09:06:36 11 that on the left on the screen here. And that one was  
09:06:38 12 mainly focused on that card donation feature that Dr. Akl  
09:06:40 13 was talking about.

09:06:41 14 I also did ask about other features, and I'll --  
09:06:44 15 I'll kind of walk you through why I did that.

09:06:49 16 And then the second survey was of Clash of Clans  
09:06:50 17 players, and that one focused on this copy layout feature,  
09:06:54 18 which is related to the template patent that Dr. Akl talked  
09:06:57 19 about.

09:06:57 20 So you can kind of think of it as two surveys, one  
09:07:00 21 on each game, that are basically the same in terms of the  
09:07:05 22 questions I asked. So -- so what were those main  
09:07:08 23 questions?

09:07:08 24 The main things I wanted to know were for these  
09:07:13 25 features that are in -- in debate in this case, what

09:07:18 1 percentage of players were aware of them, so actually know  
09:07:21 2 that that's a feature in the game; what percentage of  
09:07:24 3 players have used them; what percentage of players say,  
09:07:28 4 yes, that's important, as opposed to saying, no, I don't  
09:07:32 5 really care about that picture.

09:07:33 6 And then, finally, I asked them, okay, imagine  
09:07:37 7 that this feature actually wasn't in the game, what would  
09:07:40 8 that do, if anything, to the amount of time you spend  
09:07:43 9 playing the game? Would it go up? Would it go down?  
09:07:46 10 Would it stay the same?

09:07:47 11 So those are the main things I wanted to get out  
09:07:51 12 of the survey.

09:07:52 13 MS. SMITH: At this time, if I could see  
09:07:54 14 Plaintiff's Exhibit -- PTX-451, please.

09:08:00 15 Q. (By Ms. Smith) Doctor, do you recognize this exhibit?

09:08:04 16 A. I do. This is a copy of the questionnaire, so these  
09:08:09 17 are the actual questions that were put to the survey  
09:08:11 18 respondents in my surveys.

09:08:15 19 MS. SMITH: And if we could scan down to Page 4.  
09:08:20 20 Thank you.

09:08:21 21 Q. (By Ms. Smith) What do we see here, doctor?

09:08:23 22 A. Okay. So the -- the -- the middle question here is --  
09:08:31 23 this one here is a quality control question. So if you  
09:08:35 24 read this question, what it's saying is, okay, please  
09:08:39 25 select the other option and type in the word "quality."



09:08:43 1 And what this does is, as you can imagine, a small  
09:08:46 2 number of people when they're going through a survey,  
09:08:48 3 they're actually not really interested in taking the  
09:08:51 4 survey, so they don't read very carefully.

09:08:53 5 And those people would be caught by a question  
09:08:56 6 like this, right, because they would just -- maybe they  
09:08:58 7 would randomly click on agree. And the only way to get  
09:09:03 8 through the survey is to click other and then type in the  
09:09:06 9 word "quality." So that's an example of a quality control.

09:09:09 10 MS. SMITH: Now, if we could go to -- scan down,  
09:09:14 11 please, to Questions 10 through 11. I believe it's on  
09:09:19 12 Page 5.

09:09:23 13 A. So here's another -- actually we want to go on just --

09:09:27 14 MS. SMITH: On Page 5. Thank you.

09:09:29 15 A. Yeah. Okay.

09:09:31 16 Q. (By Ms. Smith) What do we see here, Doctor?

09:09:32 17 A. Okay. So the -- the bottom question here, and we're  
09:09:35 18 going to scroll on in a second to see the full list of  
09:09:37 19 options that people saw, but this is the question where we  
09:09:41 20 asked people what specific games they had played on their  
09:09:45 21 phone in -- in the past four weeks. And you can see  
09:09:48 22 there's a bunch of options there.

09:09:49 23 Before we go on, I just want to point out one of  
09:09:53 24 them. So this one here, Zion's Parallax, that sounds like  
09:10:01 25 a game, right? But, actually, it's made up. So this is a

09:10:01 1 way -- another way of catching people who are not giving  
09:10:04 2 truthful answers.

09:10:06 3 So if anyone says, yes, I've played Zion's  
09:10:12 4 Parallax in the last four weeks, they weren't allowed to  
09:10:14 5 continue in the survey because I made it up, so it doesn't  
09:10:16 6 exist.

09:10:16 7 So if we go on to the next page.

09:10:19 8 So, here, we're going to see that you've got the  
09:10:23 9 two games also on this list that are at issue in this case,  
09:10:27 10 Clash Royale and Clash of Clans. So people have to check  
09:10:30 11 at least one of those in order to -- to go through and take  
09:10:34 12 part in the whole survey.

09:10:37 13 MS. SMITH: Thank you.

09:10:38 14 Q. (By Ms. Smith) Dr. Neal, did you use any other quality  
09:10:46 15 control measures in your surveys?

09:10:48 16 A. Yes. So we've -- we've already talked about the first  
09:10:52 17 two here.

09:10:53 18 And then No. 3, I -- I mentioned earlier, that's  
09:10:57 19 the one where if someone got to the point -- they passed  
09:11:01 20 through all the other quality controls, and they said, yes,  
09:11:04 21 I've played Clash of Clans, I put that little test to them.

09:11:09 22 I showed them images from Clash of Clans and other  
09:11:12 23 games, and they had to say which ones really did come from  
09:11:15 24 Clash of Clans. And only if they got a perfect score -- a  
09:11:17 25 hundred percent on that test were they got to go through.

09:11:21 1 So that's -- that's No. 3 here.

09:11:22 2 And then, finally, I excluded anyone who worked in  
09:11:25 3 advertising or marketing. And that's kind of the standard  
09:11:28 4 thing that all survey experts would do in -- in cases like  
09:11:30 5 this.

09:11:36 6 Q. Did you screen out respondents, Doctor, from your  
09:11:39 7 survey?

09:11:39 8 A. I did. So a couple of final things. Think of this as  
09:11:44 9 kind of we're whittling down to make sure we're talking to  
09:11:46 10 the right people.

09:11:48 11 And so I excluded anyone who was under 15. And I  
09:11:52 12 made sure that everyone had played one of those two games,  
09:11:56 13 Clash of Clans or Clash Royale, in the last four weeks.  
09:11:59 14 And then, finally, I made sure that they lived inside the  
09:12:03 15 United States.

09:12:03 16 Q. And why was it important to you to screen those folks  
09:12:06 17 out?

09:12:06 18 A. Well, it's really important to make sure that, you  
09:12:09 19 know, you're talking to people, because the lawsuit is here  
09:12:11 20 in the United States, to make sure you're talking to  
09:12:14 21 players in the U.S.

09:12:15 22 And then the four weeks requirement is because no  
09:12:20 23 one's memory is perfect, right? And if something happened  
09:12:23 24 five weeks ago or three months ago or six months ago, maybe  
09:12:28 25 that was the last time you played the game, your memory,

09:12:31 1 just human beings being human beings, wouldn't be so good.

09:12:35 2           So we want to make sure we're talking to current  
09:12:37 3 players who are going to have good memory for the subject  
09:12:40 4 that we're asking about.

09:12:43 5 Q. What features did you survey in Clash Royale?

09:12:46 6 A. Okay. So you can see on the screen here four features  
09:12:51 7 in total. They're labeled A, B, C, and D. And A is the  
09:12:58 8 one that's actually, you know, an accused feature in the  
09:13:01 9 lawsuit.

09:13:01 10           So we heard Dr. Akl talk about this in Clash  
09:13:06 11 Royale, receiving donated cards and then upgrading those  
09:13:10 12 cards that's accused of infringing a patent.

09:13:13 13           The other ones are not, and so we call those -- in  
09:13:16 14 a scientific survey, we call those controls, and there they  
09:13:21 15 perform an important purpose. They basically help make  
09:13:24 16 sure that we don't make people think too much about just  
09:13:27 17 the one accused feature that the whole lawsuit is about, or  
09:13:30 18 at least this patent.

09:13:31 19           And so think of it as a way of, you know, making  
09:13:35 20 sure we've asked about Feature A, but we haven't made it  
09:13:39 21 so -- haven't put it -- made it so kind of salient to  
09:13:44 22 people that they're thinking about it too much, and that  
09:13:46 23 might inflate its importance.

09:13:49 24           So we kind of hide it amongst a bunch of other  
09:13:52 25 features, and that's a much more neutral, even-handed way

09:13:56 1 to ask the questions.

09:13:57 2 Q. How did you ensure that the respondents understood the  
09:14:01 3 features that you were asking about?

09:14:02 4 A. So before I got to this point of actually fielding the  
09:14:05 5 survey, I had gone through a pretty rigorous process. I --  
09:14:10 6 I talked to Dr. Akl. He, of course, is the technical  
09:14:11 7 expert. He knows all of the nuances about how the games  
09:14:13 8 work. I'm not a gaming expert. So I -- I talked with him.

09:14:18 9 And then as a survey expert, I know how to ask  
09:14:21 10 questions in a way that's clear and people can understand.

09:14:25 11 But then the final thing I did was put together  
09:14:31 12 this -- images like this that show you a written  
09:14:35 13 description -- so we can see that at the top here -- and  
09:14:38 14 then also show you some screenshots from the game that kind  
09:14:46 15 of explain how that feature works.

09:14:48 16 So someone going through the survey would read  
09:14:51 17 that written description at the top, and then they would  
09:14:53 18 see these images at the bottom. And they're all players of  
09:14:56 19 the game, so it makes sense to them.

09:14:58 20 The final thing that I did was I actually did some  
09:15:02 21 interviews with folks that played these games, one-on-one  
09:15:05 22 interviews, where they went through the questions in the  
09:15:07 23 survey and through these images, and we talked about them.

09:15:12 24 And, basically, I worked out, is this a hundred  
09:15:14 25 percent clear to you? Is anything ambiguous? Anything

09:15:17 1 that doesn't make sense? And that's how I know that people  
09:15:21 2 understood these -- these questions and these features  
09:15:24 3 perfectly.

09:15:24 4 Q. Doctor, what questions did you ask regarding the  
09:15:37 5 donation feature of Clash Royale?

09:15:41 6 A. Okay. So the -- the first thing I did was ask people  
09:15:44 7 where they were -- had paid money to play Clash Royale  
09:15:49 8 before or not. We heard Dr. Akl talk about that these --  
09:15:53 9 these games are freemium games, so you can play them for  
09:15:57 10 free.

09:15:57 11 But you can also choose to make an in-app  
09:16:02 12 purchase, and then that allows you to do cool stuff and  
09:16:03 13 speed things up and -- so we wanted to know who is a payer  
09:16:06 14 and who's not a payer.

09:16:06 15 And then once we knew that, we started presenting  
09:16:09 16 the features to them, including this critically important  
09:16:13 17 one, the card donation feature. And I wanted to know,  
09:16:17 18 okay, were you aware of this feature in the game before  
09:16:19 19 taking this survey?

09:16:21 20 And then, secondly, had you used it before?

09:16:24 21 And then, thirdly, is it something that's  
09:16:27 22 important to you or not? Those are the key questions.

09:16:32 23 Q. And what data do you collect about payers versus  
09:16:41 24 non-payers of Clash Royale?

09:16:42 25 A. Okay. So now we're going to start to look at some

09:16:42 1 actual results from the survey.

09:16:44 2 And what we can see over here, if you look at  
09:16:46 3 these bar -- bars over on the right-hand side, this is the  
09:16:49 4 percentage of Clash Royale players who have paid money to  
09:16:54 5 play the game.

09:16:55 6 So it's about -- almost 60 percent -- 59 percent  
09:16:57 7 of them, about 6 in 10, have made an in-app purchase, so  
09:17:05 8 given some money to Supercell to play Clash Royale at some  
09:17:09 9 time in the past.

09:17:12 10 Q. And, Doctor, why was it important for you to ask about  
09:17:18 11 paying versus non-paying players?

09:17:20 12 A. Well, it's my understanding that the way -- as -- as I  
09:17:25 13 mentioned earlier, these games are free to play, but -- so  
09:17:28 14 some people are basically giving money to Supercell, and  
09:17:32 15 some people are not. Some people are just playing the free  
09:17:35 16 version.

09:17:35 17 So in order -- and this is more of Dr. Becker's  
09:17:37 18 expertise. You'll hear from him later. But my  
09:17:40 19 understanding is in order to perform those financial  
09:17:43 20 calculations, in the survey, we need to know who is a payer  
09:17:50 21 and who's not a payer.

09:17:52 22 Q. Now, what did the data show regarding paying players'  
09:17:59 23 awareness and usage of the accused feature?

09:18:01 24 A. Okay. So now we're getting into, you know, these  
09:18:06 25 features specifically and did people know about them and do

09:18:08 1 they use them.

09:18:10 2           And if we look over here on the right-hand, this  
09:18:12 3 is, first of all, the awareness numbers. So amongst  
09:18:17 4 payers -- so the people who are making those in-app  
09:18:22 5 purchases -- 88 percent. So almost 9 out of 10 people who  
09:18:26 6 are paying money to Supercell, say, yes, I am aware of this  
09:18:30 7 card donation and upgrade feature.

09:18:31 8           And now if we look down at the bottom, this is now  
09:18:34 9 about usage, right, because you could -- you could be aware  
09:18:37 10 of something but not personally use it. But the bar at the  
09:18:40 11 bottom is showing us that about 69 percent, so almost 7 out  
09:18:45 12 of 10 payers, so people who are paying money to play, 69  
09:18:50 13 percent of them say, yes, I have used that feature -- the  
09:18:54 14 card donation and upgrade feature.

09:18:58 15 Q. And, Doctor, again, we're talking about paying players.  
09:19:03 16 What did your data show about whether paying players think  
09:19:08 17 this feature was -- thought the feature was important?

09:19:09 18 A. Okay. So now we're moving on to importance, right? So  
09:19:14 19 we know a lot of people are aware of this feature. We know  
09:19:16 20 a lot of people say they've used it. And this bar tells  
09:19:19 21 us, also, that a lot of people -- so, essentially, 70  
09:19:22 22 percent, 7 out of 10 people, say that card donation and  
09:19:29 23 upgrade feature is important to me as a player of the game.

09:19:33 24 Q. Did you measure what the impact would be from removing  
09:19:38 25 the feature in the games?



09:19:40 1 A. I did, yes. So the final piece of this was for me to  
09:19:45 2 say, okay, you've told us that you're aware of the card  
09:19:49 3 donation feature; that you use it; that it's important.  
09:19:53 4 Now tell me what would happen if you -- if it wasn't  
09:19:56 5 actually in the game.

09:19:58 6 And what this is telling us is that 27 percent, so  
09:20:01 7 a little over a quarter of people, say that if that feature  
09:20:06 8 wasn't in the game, I would play the game less.

09:20:14 9 Q. Now, Dr. Neal, you also did a survey regarding Clash of  
09:20:18 10 Clans; is that correct?

09:20:19 11 A. I did.

09:20:19 12 Q. And what features did you survey for Clash of Clans?

09:20:22 13 A. Okay. So you can see here there were more features I  
09:20:26 14 asked about in Clash of Clans.

09:20:27 15 But, again, there's really just one feature that  
09:20:30 16 is of -- of the main importance, and that's Feature B here,  
09:20:35 17 that's that copy layout feature. That's the one that's  
09:20:38 18 accused of, I understand, infringing that template patent.

09:20:43 19 And -- but just like any other survey, we kind of  
09:20:46 20 hide it amongst a bunch of other features that are not  
09:20:48 21 accused of infringing any patents. And all those other  
09:20:52 22 features, other than B on the screen here, those are the  
09:20:57 23 controls that help make sure we're not drawing too much  
09:21:00 24 attention to Feature B.

09:21:02 25 Q. Doctor, did you ask the Clash of Clans players the same

09:21:07 1 questions that we went through in the Clash Royale survey?  
09:21:10 2 A. Yes, exactly the same set of questions and the -- the  
09:21:15 3 layout was the same. So, you know, this is -- this is  
09:21:17 4 the -- the screens that someone would have seen going  
09:21:21 5 through the Clash of Clans survey.

09:21:23 6 So just like before, the survey respondents saw a  
09:21:29 7 written description of the feature, and then they also saw  
09:21:31 8 a set of screenshots from the actual game that helped bring  
09:21:35 9 it to life for them and remind them what they were -- what  
09:21:38 10 I wanted them to think about.

09:21:39 11 Q. And if you would, give the jurors a summary of your  
09:21:46 12 findings as to Clash of Clans?

09:21:48 13 A. Certainly. Yeah, so since we went through the Clash  
09:21:53 14 Royale ones slowly one-by-one, we've got all the results  
09:21:57 15 here together for the Clash of Clans one, since we kind of  
09:22:01 16 know the sequence.

09:22:02 17 So exactly the same set of metrics that we got for  
09:22:05 18 Clash Royale, but now we're talking about the copy layout  
09:22:09 19 feature in Clash of Clans.

09:22:10 20 And, first of all, what you can see is that 77  
09:22:17 21 percent, almost 8 out of 10 people were aware of that  
09:22:21 22 feature before the survey. About 44 percent say they had  
09:22:25 23 personally used that feature.

09:22:28 24 Again, about 44 percent say that it's a feature  
09:22:32 25 that's important to them. And then about 11 percent say if

09:22:36 1 that feature was not in the game, I would actually play the  
09:22:38 2 game less.

09:22:41 3 Q. And, Doctor, did your work stop here?

09:22:44 4 A. It did not. I did one final analysis -- statistical  
09:22:49 5 analysis.

09:22:49 6 Q. And what was that?

09:22:50 7 A. It's something called a logistic regression, and it  
09:22:54 8 sounds very fancy, but it really answers a simple question,  
09:22:59 9 which is -- so think about what the -- the survey gave me  
09:23:02 10 in terms of data.

09:23:03 11 I know whether each person found a feature to be  
09:23:07 12 important or not, and I also know whether they were a payer  
09:23:11 13 or not. But this statistical analysis allowed me to say,  
09:23:16 14 okay, if someone finds one of these accused features  
09:23:21 15 important, does that mean that they're -- in a scientific  
09:23:25 16 way that they're statistically more likely to pay money to  
09:23:29 17 Supercell to play the game. So that's what this final  
09:23:33 18 analysis helped me answer.

09:23:34 19 Q. You -- you mentioned this, you say that a fancy  
09:23:38 20 analysis of logistic regression, is that something you came  
09:23:42 21 up with?

09:23:42 22 A. I did not, no. Logistic regression has been around for  
09:23:45 23 a long time. And, interestingly, it actually started in  
09:23:51 24 agriculture and farming.

09:23:52 25 So in the '40s and '30s when farms started to get

09:23:59 1 bigger and they got more technology and farmers started  
09:24:03 2 connecting with each other more, they realized they had a  
09:24:08 3 lot of information about crop yields in different years and  
09:24:09 4 what fertilizer had been used in 1939 versus 1940 versus  
09:24:13 5 '41 and they also knew what the crop yields were, right,  
09:24:17 6 and that's very valuable information.

09:24:19 7 But it's not quite as simple as saying, okay, we  
09:24:23 8 used this fertilizer in '39, and we got this bump of crop.  
09:24:28 9 And then we changed in 1940, and the crops weren't quite so  
09:24:32 10 good. So, of course, a lot of other things are changing,  
09:24:34 11 right, so maybe there was a lot of rainfall in 1941.

09:24:41 12 So these statistical techniques were actually  
09:24:44 13 developed in agriculture and farming to solve that problem.  
09:24:47 14 Basically, to give you a way to say, okay, well, we used  
09:24:51 15 this fertilizer and we got a great result, but there was a  
09:24:56 16 lot of rainfall. So we need to kind of do a little  
09:25:01 17 numerical adjustment there. So that's what -- what  
09:25:04 18 regression allows you to do.

09:25:05 19 And, really, I'm using -- I'm using it here in  
09:25:10 20 exactly the same sense, even a simple way to answer, okay,  
09:25:13 21 if you say these accused features are important, is there a  
09:25:20 22 higher likelihood that you're paying money to Supercell?  
09:25:23 23 It's exactly the same as saying, if I use Fertilizer A, is  
09:25:28 24 there a significantly higher chance that I'm going to have  
09:25:33 25 a great crop that year?

09:25:34 1 Q. And, Dr. Neal, what do these graphs tell us?

09:25:37 2 A. So these give us the results of the logistic  
09:25:41 3 regression. And so let me just walk you through them.

09:25:43 4 The one on the left is the one for Clash Royale,  
09:25:46 5 and you can see that there are two dots here. And these --  
09:25:50 6 these dots represent -- the left one that's lower  
09:25:54 7 represents people who say, no, the card donation feature,  
09:25:58 8 that's not important to me. And there are some of those  
09:26:00 9 people.

09:26:01 10 The one on the right, the higher dot, are the  
09:26:06 11 people who say, yes, it is important to me. And if you see  
09:26:12 12 the line between the two of them goes up, right, it's not a  
09:26:17 13 flat line. And if you look over here on the -- the left of  
09:26:23 14 the screen, this axis here that's going from 0 up to a  
09:26:28 15 hundred, this is the -- the probability that someone is  
09:26:31 16 paying money to Supercell to play the game.

09:26:33 17 And so what this is telling us is that, if you  
09:26:37 18 think that accused feature is important, there's a higher  
09:26:41 19 chance of you paying money to Supercell to play the game.  
09:26:48 20 And -- and this analysis actually allows us to put an exact  
09:26:52 21 number on it, and that's the number down here.

09:26:54 22 So 13.3 percent. So, basically, what this means  
09:26:58 23 is, if you're a person who finds that accused feature  
09:27:02 24 important, there's a 13.3 percent increase in the chance  
09:27:08 25 that you're going to give money to Supercell to play the

09:27:10 1 game.

09:27:11 2 And then we did exactly the same analysis over  
09:27:13 3 here for Clash of Clans.

09:27:15 4 Q. And what type of increase do we see for Clash of Clans?

09:27:18 5 A. So here the number is 9 percent. So there are more  
09:27:23 6 dots because there are more features that we -- we studied  
09:27:27 7 in Clash of Clans, but the same conclusion.

09:27:29 8 Here, if you find those -- that accused feature in  
09:27:34 9 Clash of Clans, that copy layout feature, if you find that  
09:27:36 10 important, you see a 9 percent increase in the chance of  
09:27:41 11 you paying money to Supercell to play Clash of Clans.

09:27:47 12 Q. Dr. Neal, based on all of that data you collected from  
09:27:52 13 your surveys, what were your final conclusions?

09:27:54 14 A. Okay. So, first of all, thinking at a high level about  
09:28:03 15 conclusions from both of these surveys, we saw that  
09:28:06 16 awareness, usage, and importance of these two accused  
09:28:11 17 features is -- is high, and it's higher for the people who  
09:28:14 18 are paying money to Supercell to play the games. So that's  
09:28:17 19 the first conclusion.

09:28:20 20 The second conclusion is that there is a portion  
09:28:23 21 for both games, portion of players who say, if this feature  
09:28:28 22 wasn't in the game, I would actually play the game less.

09:28:32 23 And then, finally, in that -- that statistical  
09:28:36 24 analysis I just walked you through, we saw that there is a  
09:28:40 25 scientifically quantifiable, real, significant relationship

09:28:45 1 between saying, yes, this feature is important to me and  
09:28:49 2 paying money to Supercell to play the game.

09:28:52 3 Q. Thank you so much, Dr. Neal.

09:28:55 4 MS. SMITH: Your Honor, I'll pass the witness.

09:28:57 5 THE COURT: All right. Cross-examination by the  
09:28:58 6 Defendant.

09:29:15 7 Do we have binders to distribute, counsel?

09:29:20 8 MR. KOHM: Yes, Your Honor.

09:29:20 9 THE COURT: Let's proceed with that.

09:29:31 10 MR. DACUS: Your Honor, may I approach to hand  
09:29:34 11 them to the witness?

09:29:35 12 THE COURT: You may.

09:29:37 13 MR. DACUS: Thank you.

09:29:57 14 THE COURT: All right. Counsel, you may proceed  
09:29:59 15 with cross-examination.

09:29:59 16 MR. KOHM: Thank you, Your Honor.

09:29:59 17 CROSS-EXAMINATION

09:30:00 18 BY MR. KOHM:

09:30:00 19 Q. Dr. Becker -- I'm sorry, Dr. Neal, it's nice to see you  
09:30:06 20 again.

09:30:07 21 A. Good to see you, too.

09:30:08 22 Q. Dr. Neal, you testified regarding the results of your  
09:30:12 23 survey for both Clash of Clans and Clash Royale, correct?

09:30:15 24 A. Yes.

09:30:15 25 Q. And you showed the jury some of those results?

09:30:19 1 A. Yes.

09:30:21 2 MR. KOHM: Mr. Smith, can you please pull up  
09:30:23 3 Dr. Neal's report at Table 23?

09:30:27 4 Q. (By Mr. Kohm) And I believe you just testified that  
09:30:34 5 the results of your survey showed that a portion of players  
09:30:39 6 would play more if the accused features were removed from  
09:30:43 7 the games, correct?

09:30:45 8 A. I think I said play less.

09:30:47 9 Q. I'm sorry, play less. Excuse me, yes.

09:30:51 10 A. Correct.

09:30:51 11 Q. And that was the conclusion -- your opinion -- the  
09:30:55 12 conclusion of your opinions?

09:30:56 13 A. That was one of my opinions.

09:30:57 14 Q. Okay. And if we're looking at Table 23, this is the  
09:31:05 15 result of -- on playing time if the features were removed  
09:31:11 16 for Clash of Clans, correct?

09:31:14 17 A. Yes, that appears to be the case, yes.

09:31:18 18 Q. All right. And for Clash of Clans, the relevant  
09:31:24 19 feature for -- for discussion is Feature B; is that  
09:31:30 20 correct?

09:31:30 21 A. That's correct.

09:31:31 22 Q. All right. And if we look at -- the first column is an  
09:31:39 23 indication of whether the respondents would play more,  
09:31:43 24 less, or the same amount, correct?

09:31:45 25 A. Sorry, could you say that one more time?



09:31:47 1 Q. Sure, the -- under Impact if Absent, the options are  
09:31:54 2 play more, less, or the same amount, correct?

09:31:57 3 A. Or don't know, no opinion.

09:31:59 4 Q. Fair enough. So you agree with me that people who  
09:32:03 5 don't know are not saying they're going to play more?

09:32:03 6 A. Yes, I do agree with that.

09:32:05 7 Q. Or less?

09:32:07 8 A. Correct.

09:32:07 9 Q. Okay. The second column is the Payer column. Is that  
09:32:12 10 reflective of the survey respondents who indicated that  
09:32:16 11 they are paying players of Clash of Clans?

09:32:19 12 A. Yes, it is.

09:32:19 13 Q. And the next column is the non-payer players?

09:32:23 14 A. Correct.

09:32:24 15 Q. Okay. And so for --

09:32:26 16 MR. KOHM: If we could just scroll down a little  
09:32:29 17 bit, Mr. Smith, so we can see the numbers for B. No --  
09:32:33 18 it's fine.

09:32:34 19 Q. (By Mr. Kohm) For Feature B, which is the accused  
09:32:38 20 feature, your results showed that 7.3 percent using the  
09:32:47 21 full Clash of Clans sample as a denominator, it would  
09:32:55 22 actually spend more time playing the game if Feature B was  
09:32:58 23 removed, correct?

09:33:00 24 A. That's correct.

09:33:01 25 Q. All right. And that is in contrast to right below it

09:33:04 1 6.6 percent would spend less time playing the game,  
09:33:11 2 correct?

09:33:11 3 A. Exactly, yes.

09:33:12 4 Q. And so the net result is that if you remove the feature  
09:33:15 5 about point -- paying players, you would have about  
09:33:22 6 .7 percent paying players playing the game more because of  
09:33:25 7 the removal of the feature, correct?

09:33:27 8 A. That's correct.

09:33:30 9 Q. And so the net result is a benefit to playing time,  
09:33:34 10 correct?

09:33:34 11 A. I think benefit to playing time is a complicated term  
09:33:40 12 because that could include --

09:33:41 13 Q. Okay. Let me --

09:33:45 14 THE COURT: Let him finish the answer or withdraw  
09:33:48 15 the question, one of the two. Don't cut him off.

09:33:50 16 MR. KOHM: Sorry, Your Honor. I'll ask a better  
09:33:52 17 question.

09:33:52 18 Q. (By Mr. Kohm) If you consider both how much -- the  
09:33:55 19 number of players that would be playing more and the number  
09:33:58 20 of players that would be playing less, with respect to  
09:34:03 21 paying players, removing the feature would lead to more  
09:34:07 22 players playing the game for more time than less time,  
09:34:14 23 correct?

09:34:14 24 A. I don't think that's actually technically correct,  
09:34:17 25 because your question included both more players and more

09:34:22 1 time, and this -- this question here is -- is -- these  
09:34:26 2 percentages are not quantifying time; they're quantifying  
09:34:31 3 people who would say more or less.

09:34:34 4 Q. Okay. Fair -- fair characterization -- fair  
09:34:38 5 clarification.

09:34:38 6 This is restricted to just identifying the fact  
09:34:40 7 that more players would spend more time, correct?

09:34:48 8 A. Well, no, actually, on the far right, you'll see the  
09:34:58 9 9.1 and the 10.6. More players would spend less time. I  
09:35:02 10 think you were asking me about payers which is the first  
09:35:05 11 column.

09:35:05 12 Q. Fair enough, yes. I appreciate that. So more paying  
09:35:08 13 players -- I'm sorry, it would result in more paying  
09:35:12 14 players spending more time playing as opposed to spending  
09:35:15 15 less time, correct?

09:35:16 16 A. Correct.

09:35:16 17 Q. And you clarified my question regarding would actually  
09:35:20 18 spend more time, as far as the amount of time, correct?

09:35:25 19 A. Cor -- correct.

09:35:26 20 Q. Did you actually survey that issue?

09:35:28 21 A. I did.

09:35:30 22 Q. And did you ask the users how many more minutes and  
09:35:36 23 hours they would spend playing the game if the feature was  
09:35:39 24 removed?

09:35:41 25 A. No.

09:35:42 1 Q. You could have, though, right?

09:35:45 2 A. Yes, conceivably, I could have done that.

09:35:48 3 Q. And if we go down to the next row, with respect to  
09:35:59 4 paying players, your results showed that 30 percent would  
09:36:07 5 spend the same amount of time, correct?

09:36:10 6 A. Yes.

09:36:10 7 Q. And so if we add the numbers up, we have 37.6 percent  
09:36:17 8 would spend -- of paying players would spend the same or  
09:36:22 9 more time playing the game, correct?

09:36:23 10 A. No.

09:36:26 11 Q. I'm sorry, let me -- let me try again. Maybe I  
09:36:32 12 misspoke.

09:36:32 13 If we add -- if we add the Column B -- I'm sorry,  
09:36:37 14 Row B numbers together for paying players and we added the  
09:36:43 15 respondents who would spend -- the paying respondents that  
09:36:47 16 would spend more time or the same amount of time, that is  
09:36:51 17 37.6 percent, right?

09:36:53 18 A. Yes.

09:36:53 19 Q. Okay. And 6. -- only 6.6 percent of paying players  
09:37:00 20 would spend less time, correct?

09:37:02 21 A. Sorry. Could you say that one more time?

09:37:05 22 Q. Only 6.6 percent of paying players would spend less  
09:37:09 23 time?

09:37:10 24 A. Well, it's not -- the denominator here is all players.  
09:37:16 25 So I think you're -- with respect, you're confusing these

09:37:21 1 percentages, which -- which actually are of all players,  
09:37:26 2 and you're jumbling up the percentages.

09:37:29 3 Q. Fair enough. So 6.6 percent of payers -- I'm sorry,  
09:37:34 4 players who happen to be paying would spend less time?

09:37:38 5 A. Correct.

09:37:38 6 Q. All right. I appreciate that clarification.

09:37:51 7 And you -- if we look at the -- the total numbers  
09:37:55 8 here of -- I want to approach that clarification.

09:37:58 9 The N under payer is the number of respondents,  
09:38:08 10 correct?

09:38:08 11 A. Correct.

09:38:09 12 Q. All right. And so if we added up 29.6, 120, and 9,  
09:38:12 13 that would give us the total universe of paying players  
09:38:15 14 regarding Feature B?

09:38:17 15 A. Yes.

09:38:22 16 Q. All right. And so my math says that's a -- 184 total  
09:38:26 17 paying players. Do you disagree with that?

09:38:28 18 A. I can't do that in my head, but that seems roughly  
09:38:34 19 correct.

09:38:34 20 Q. All right. And do you disagree with me that that  
09:38:37 21 would -- looking in the universe of only paying players,  
09:38:41 22 that 17.3 percent would then become 15.76 percent? Do you  
09:38:48 23 disagree with that?

09:38:48 24 A. I'm not sure where you're getting 17.3.

09:38:52 25 Q. No, 7.3. So if you look at paying players row -- or

09:38:58 1 column for Feature B, people who would spend more time

09:39:03 2 paying the game is 7.3 percent. Do you see that?

09:39:08 3 A. Yes.

09:39:08 4 Q. And if we look only at the 8 -- 184 total paying

09:39:12 5 players, that number would actually represent 15.76 percent

09:39:19 6 of paying players would spend more time playing the game?

09:39:22 7 A. I can't do that math in my head, sorry. If you want to

09:39:38 8 give me a paper and pencil, I can try and do it.

09:39:44 9 Q. It's unnecessary.

09:39:46 10 THE COURT: If he wants you to do that, he'll ask

09:39:48 11 you. No need to volunteer.

09:39:52 12 THE WITNESS: Okay.

09:39:52 13 THE COURT: Let's ask the next question.

09:39:54 14 MR. KOHM: Thank you, Your Honor.

09:39:54 15 Mr. Smith, can we move on to Table 23C, please?

09:40:00 16 Q. (By Mr. Kohm) Dr. Neal, this is your results for Clash

09:40:15 17 Royale, correct?

09:40:15 18 A. Yes, sir. Yeah.

09:40:16 19 Q. Okay. And with respect to this survey, Feature A is

09:40:25 20 the relevant feature, correct?

09:40:26 21 A. Correct.

09:40:28 22 Q. All right. And I believe you testified as one of your

09:40:31 23 conclusions that a portion of the players would play less

09:40:34 24 if the feature was removed, correct?

09:40:36 25 A. Correct.

09:40:47 1 Q. And if we look at Feature A for the paying players, as  
09:41:00 2 well as the non-payers, that shows that 7.3 percent and 3.9  
09:41:04 3 percent of players would play -- spend more time playing  
09:41:07 4 the game if the feature was removed, correct?

09:41:11 5 A. Yes.

09:41:12 6 Q. And so it would also be true that -- as a conclusion,  
09:41:18 7 that if we removed the accused feature from Clash Royale,  
09:41:25 8 that a portion of players would play more time, correct?

09:41:28 9 A. Yes.

09:41:41 10 MR. KOHM: You can take that down, Mr. Smith.

09:41:44 11 Q. (By Mr. Kohm) You agree that different features of a  
09:41:46 12 product may have different appeal to different people,  
09:41:50 13 correct?

09:41:50 14 A. Yes.

09:41:52 15 Q. And you agree that as a general principle, if you ran a  
09:41:55 16 study and you tested the value of one feature, you  
09:41:59 17 shouldn't assume that the value of that feature is the same  
09:42:02 18 for different features?

09:42:07 19 A. As a survey expert, that's -- that would -- I think  
09:42:10 20 that's a reasonable statement to make about how to conduct  
09:42:13 21 a survey, yes.

09:42:17 22 Q. And you agree that the -- a survey about one feature  
09:42:25 23 could tell you about the value of that feature but would  
09:42:29 24 not tell you the value of a different feature, correct?

09:42:39 25 A. Well, as a survey matter, I would want to survey all of

09:42:47 1 the features that I was interested in and use a survey to  
09:42:50 2 get to that conclusion. So I think I agree with you as a  
09:42:56 3 survey expert.

09:42:57 4 MR. KOHM: Your Honor, motion to strike.

09:43:01 5 THE COURT: Overruled.

09:43:02 6 Q. (By Mr. Kohm) So if I heard you correctly, that -- as  
09:43:14 7 a survey expert, you feel that it's important to survey  
09:43:17 8 each feature you want to know the value of, correct?

09:43:20 9 A. If the goal was to get survey data on all those  
09:43:23 10 features, yes.

09:43:27 11 Q. And in this case, you did, in fact, survey a number of  
09:43:33 12 different features, correct?

09:43:34 13 A. Yes.

09:43:36 14 Q. And those are -- those surveys were done for Clash of  
09:43:44 15 Clans and Clash Royale, correct?

09:43:45 16 A. Correct.

09:43:45 17 Q. And those are both video games?

09:43:48 18 A. Yes -- well, smartphone games. I think my  
09:43:50 19 understanding is people use those terms interchangeably.

09:43:53 20 Q. Okay. And even though they're both video games, you  
09:43:57 21 felt it was necessary to do surveys on both games?

09:44:03 22 A. Yes.

09:44:06 23 Q. And you received the results from -- for both games, as  
09:44:11 24 we saw, correct?

09:44:13 25 A. Correct.



09:44:13 1 Q. And you included those results in your report, correct?

09:44:16 2 A. Yes.

09:44:17 3 Q. And you gave those results to GREE's counsel, correct?

09:44:22 4 A. Yes.

09:44:27 5 Q. And you haven't offered any opinion that the results

09:44:31 6 for one of the games accurately reflects the value of

09:44:36 7 different features for the other game, correct?

09:44:37 8 A. I have not, because I would not be qualified to do

09:44:42 9 that.

09:44:44 10 Q. You've spent quite a number of years in the area of

09:44:55 11 market research and consumer demand, correct?

09:44:58 12 A. I think that's reasonable to say, yes.

09:45:06 13 MR. KOHM: Could we pull up Tables 1b and 1a from

09:45:11 14 Dr. Neal's report, Mr. Smith?

09:45:14 15 Q. (By Mr. Kohm) These are the tables of -- listing the

09:45:28 16 accused features from your report, correct?

09:45:30 17 A. Yes.

09:45:30 18 Q. And Feature B on the left side for Clash of Clans is

09:45:33 19 the accused feature?

09:45:34 20 A. Correct.

09:45:35 21 Q. All right. And you agree with me that it would be

09:45:40 22 improper to be -- to assume that the results of your survey

09:45:47 23 from -- in Table 1a with respect to Feature A, for example,

09:45:51 24 equally apply to Feature A in 1b, correct?

09:45:58 25 A. I don't really know what you mean by apply.

09:46:05 1 Q. Let me repeat my question and make sure it was clear.

09:46:19 2           You would agree with me that it is improper to  
09:46:22 3 assume that the results of the survey with respect to  
09:46:26 4 Feature A in Table 1a equally apply to the Feature A of  
09:46:31 5 Table 1b, correct?

09:46:32 6 A. And I'm just trying to clarify what you mean by apply,  
09:46:36 7 and I'll try and give you an answer.

09:46:38 8 Q. Sure. They can be used for.

09:46:41 9 A. Well, since I have data on both, I would not do that.  
09:46:44 10 I agree with you, I would not do that.

09:46:46 11 Q. And it would not be proper to do that, correct?

09:46:49 12 A. I think proper -- from a survey point of view, I would  
09:46:54 13 want to collect -- and as I did, I would want to collect  
09:46:58 14 survey data on both of them. So from a survey point of  
09:47:03 15 view, the proper thing to do would be exactly what I did  
09:47:05 16 do.

09:47:06 17 Q. And so it'd be improper to assume that the results  
09:47:13 18 from -- obtained in -- for Clash of Clans apply to Clash  
09:47:17 19 Royale, for example?

09:47:18 20 A. I think that's a very broad question. I don't really  
09:47:25 21 know what you mean by proper. If I have the data from both  
09:47:30 22 features, I would rely on that.

09:47:33 23           MR. KOHM: Can we pull up Dr. Neal's deposition  
09:47:36 24 transcript, 82, Lines 17, through 83, Line 7?

09:47:43 25 Q. (By Mr. Kohm) Dr. Neal, during your deposition, I

09:47:49 1 asked you whether in your opinion -- I'm sorry, whether  
09:47:59 2 from what you testified a moment ago, is it fair to say  
09:48:02 3 that you should not -- that it's improper to assume the  
09:48:04 4 results of your survey with respect to Table -- Feature A  
09:48:10 5 in Table 1b equally apply to Feature A of Table 1a.

09:48:16 6 Do you see that?

09:48:18 7 A. Yes.

09:48:18 8 Q. And you can see the response, but I -- I'm only going  
09:48:22 9 to read the first bit.

09:48:24 10 You responded: I think it's reasonable to say  
09:48:26 11 that it would not be proper to assume that the value of any  
09:48:30 12 feature in Clash Royale was by default the same as any  
09:48:35 13 other feature in Clash of Clans.

09:48:37 14 Correct?

09:48:37 15 A. Yes.

09:48:46 16 Q. I want to talk to you for a moment about setting the  
09:48:55 17 correct population for a survey.

09:48:56 18 You would agree with me that it's important that  
09:49:00 19 the sampling -- that the sampling of any given survey frame  
09:49:05 20 the approximate population correctly, right?

09:49:12 21 A. Yes, I do, very important.

09:49:14 22 Q. And this -- in the surveys you conducted you stated  
09:49:18 23 that the correct population of the total universe of  
09:49:21 24 current Supercell game players, both paying and non-paying,  
09:49:26 25 correct?

09:49:26 1 A. Yes. I think I went on to add some nuance to that,  
09:49:30 2 but, yes.

09:49:31 3 Q. And -- and your -- the results from your survey showed  
09:49:41 4 that the population that you sampled consisted of  
09:49:45 5 approximately 60 percent users have -- who have made in-app  
09:49:50 6 purchases in Clash of Clans and about 38 percent of players  
09:49:55 7 who had not, correct?

09:49:56 8 A. Yes.

09:49:57 9 Q. And -- and that was your sample of the Clash of Clans  
09:50:03 10 player universe, correct?

09:50:05 11 A. Current player universe, yes.

09:50:16 12 Q. And it's important to ensure that that accurately  
09:50:19 13 reflects the real-life universe, correct?

09:50:24 14 A. Yes.

09:50:27 15 Q. Your survey data does not indicate how much more or  
09:50:48 16 less revenue Supercell would generate from the removal of  
09:50:53 17 any feature, correct?

09:50:54 18 A. Well, I'm not qualified to comment on that. That's  
09:50:57 19 really a question for Dr. Becker.

09:50:59 20 Q. So your survey data doesn't contain that information,  
09:51:03 21 correct?

09:51:03 22 A. No, that's not what I said. I said that I am not --  
09:51:06 23 I'm a survey expert. I can opine on what my survey asked  
09:51:12 24 about, which is awareness, usage, importance. Other  
09:51:19 25 experts can do things with that data that I don't have the

09:51:23 1 qualifications to do.

09:51:24 2 Q. So your survey just produces the hard numbers, I  
09:51:28 3 believe you testified?

09:51:29 4 A. My survey produces hard numbers that -- some of which I  
09:51:38 5 can just present, as I've done here, and explain to a jury  
09:51:43 6 the awareness, the importance, the usage. Those data can  
09:51:47 7 also, as I understand it, be used by other experts to  
09:51:50 8 perform the kinds of financial calculations that I  
09:51:54 9 understand you're asking me about.

09:51:55 10 Q. And did you ever instruct Dr. Becker to ignore any of  
09:51:59 11 your hard numbers?

09:52:01 12 A. No.

09:52:07 13 Q. Did you ever instruct Dr. Becker to not rely on your  
09:52:14 14 data for Clash of Clans?

09:52:17 15 A. No.

09:52:33 16 MR. KOHM: Mr. Smith, could we pull up Page 140 of  
09:52:38 17 Dr. Neal's report?

09:53:00 18 Q. (By Mr. Kohm) Dr. Neal, I believe we saw this image a  
09:53:03 19 few moments ago, correct?

09:53:04 20 A. I believe so.

09:53:06 21 Q. And this is something you showed to the users -- I'm  
09:53:10 22 sorry, to the survey participants on -- regarding the  
09:53:14 23 functionality of the accused feature for Clash Royale?

09:53:18 24 A. Yes, I believe this is part of the card donation  
09:53:23 25 imagery.

09:53:23 1 Q. And did you pick which image to include yourself, or  
09:53:28 2 did you receive input from Dr. Akl?

09:53:30 3 A. I received input from Dr. Akl.

09:53:32 4 Q. And was it Dr. Akl that suggested you include this?

09:53:39 5 A. I don't remember specifically this imagery. There were  
09:53:43 6 multiple rounds of refining -- fining those images, and I  
09:53:47 7 don't -- I can't recall this exact screenshot.

09:53:51 8 Q. But you worked with Dr. Akl to ensure that your  
09:53:54 9 description of the accused feature was accurate, correct?

09:53:56 10 A. Yes, I think that's a fair characterization.

09:54:00 11 Q. All right. And this was intended to indicate to the  
09:54:06 12 survey participants that this is the selection of the card  
09:54:10 13 as required by the claims?

09:54:12 14 A. I'm not qualified to comment on that. That's, I think,  
09:54:15 15 a technical question.

09:54:16 16 Q. Let me rephrase.

09:54:18 17 This -- you worked with Dr. Akl to ensure that  
09:54:24 18 this image accurately reflected the selection of a card to  
09:54:28 19 donate, of the accused feature in the card donation patent,  
09:54:33 20 correct?

09:54:33 21 A. I think that's fair to say, yes.

09:54:35 22 Q. And you said there were multiple revisions of your  
09:54:50 23 preparation of the survey; is that correct?

09:54:55 24 A. Yes, there were -- there were drafts, as there always  
09:54:59 25 are in creating a survey, yes.

09:55:01 1 Q. All right. And you worked hard to make sure it was  
09:55:06 2 accurate, correct?

09:55:07 3 A. Yes, I worked hard, in combination with others.

09:55:15 4 MR. KOHM: Mr. Smith, can we pull up PX-451 at  
09:55:22 5 Page 36?

09:55:24 6 Q. (By Mr. Kohm) All right. Do you see the -- this is  
09:55:41 7 also from your survey, correct?

09:55:42 8 A. Yes.

09:55:42 9 Q. And this describes the accused feature in Clash of  
09:55:46 10 Clans?

09:55:46 11 A. Correct.

09:55:47 12 Q. All right. And this is describing just the capability  
09:55:53 13 of copying another layout and setting it as an active  
09:56:01 14 layout for one's home base, correct?

09:56:03 15 A. That's my understanding, yes.

09:56:05 16 Q. It doesn't specify how that copying takes place?

09:56:09 17 A. It doesn't appear to. I'm not really qualified to give  
09:56:12 18 you a technical interpretation of it, but it doesn't appear  
09:56:16 19 to.

09:56:17 20 Q. All right. But as it's written any -- any form of  
09:56:20 21 copying another's play out -- another player's layout and  
09:56:27 22 setting it as the active layout for your home village would  
09:56:30 23 fall within the scope of this description, correct?

09:56:33 24 A. Well, I don't know how a gamer would interpret that. I  
09:56:36 25 presume a gamer would interpret that in the context of how

09:56:40 1 the game works. So they would understand what copying  
09:56:43 2 means in a way that I as a person who doesn't really play  
09:56:48 3 this game would not understand.

09:56:49 4 Q. So thank you for that clarification.

09:56:50 5 So you're assuming that for the purpose of your  
09:56:56 6 survey, that you were wiping out any possibility of users  
09:57:02 7 copying another player's layout and setting it as an active  
09:57:05 8 layout, not just -- well, let me rephrase. Excuse me.

09:57:11 9 You're assuming for the purpose of your survey  
09:57:13 10 that the user is going to understand that this applies  
09:57:16 11 across the board to the game, correct?

09:57:18 12 A. No, I don't think I'm assuming that.

09:57:19 13 Q. Okay. So which part of copying another player's layout  
09:57:25 14 does this refer to?

09:57:26 15 A. Well, as I explained to you earlier, arriving at a  
09:57:31 16 clearly-understood set of descriptions in a survey requires  
09:57:34 17 multiple steps. One of them was me relying on Dr. Akl, who  
09:57:39 18 is -- who does have that technical expertise. Another was  
09:57:43 19 the pilot testing that I did where I put these in front of  
09:57:47 20 actual players of the game and talked them through. And no  
09:57:50 21 one when I did that said to me, this is confusing. Or what  
09:57:53 22 exactly does it mean by copying? Everyone apparently  
09:57:56 23 understood that perfectly.

09:57:59 24 MR. KOHM: Motion to strike, Your Honor.

09:58:00 25 THE COURT: Overruled.



09:58:01 1 Q. (By Mr. Kohm) Do you know whether -- well...

09:58:23 2 MR. KOHM: Mr. Smith, can you please pull up  
09:58:27 3 PX-451 at Pages 139 and 142.

09:58:37 4 Q. (By Mr. Kohm) And this is a feature for Clash Royale,  
09:58:42 5 correct?

09:58:42 6 A. Yes.

09:58:42 7 Q. And you described it as the ability to receive donated  
09:58:45 8 cards and then upgrade those cards, correct?

09:58:48 9 A. Yes.

09:58:49 10 Q. Do you recall -- let me rephrase.

09:58:55 11 You didn't describe the feature as being limited  
09:58:59 12 to upgrading only when the donated card was the last card  
09:59:03 13 you needed for an upgrade, correct?

09:59:06 14 A. That language does not appear here, that's correct.

09:59:09 15 Q. Okay. And so that is not what you tested in your  
09:59:14 16 survey?

09:59:14 17 A. Well, again, I have to give the same answer I just  
09:59:19 18 gave, which is that I -- because I'm not a player of Clash  
09:59:22 19 Royale, I can't tell you, and that's not the job of the  
09:59:27 20 survey expert, exactly how a player would interpret this.  
09:59:30 21 I'm relying on Dr. Akl and the pilot testing I did, which  
09:59:33 22 leads me to believe -- to know that people understood this  
09:59:36 23 perfectly.

09:59:37 24 Q. Right. And it says the ability to receive a card and  
09:59:43 25 then upgrade it, correct?

09:59:44 1 A. Yes.

09:59:44 2 Q. All right. That's very clear, isn't it?

09:59:47 3 A. I believe so, yes.

10:00:00 4 MR. KOHM: That's all I have, Your Honor.

10:00:02 5 THE COURT: You pass the witness?

10:00:03 6 MR. KOHM: Yes, Your Honor.

10:00:04 7 THE COURT: Is there redirect, Ms. Smith?

10:00:07 8 MS. SMITH: Very briefly, Your Honor.

10:00:08 9 THE COURT: All right. Proceed.

10:00:08 10 REDIRECT EXAMINATION

10:00:09 11 BY MS. SMITH:

10:00:09 12 Q. Doctor, as a survey expert, was it your job to figure  
10:00:27 13 out that when a feature was removed why some players played  
10:00:30 14 more and some players played less?

10:00:33 15 A. No, that was not one of the goals of my survey.

10:00:35 16 Q. Whose job is that?

10:00:39 17 A. That would be Dr. Becker's -- Dr. Becker's role.

10:00:43 18 Q. And was it your job in this case to -- counsel asked  
10:00:47 19 you a couple questions about instructing Dr. Becker. Was  
10:00:51 20 it your job to instruct Dr. Becker on how he is to do his  
10:00:55 21 job?

10:00:55 22 A. No, it's not my expertise. I wouldn't -- wouldn't have  
10:00:57 23 a basis for telling him how to do his job.

10:01:00 24 Q. Now, opposing counsel talked to you about your -- your  
10:01:04 25 population of paying users. How would the results of your

10:01:08 1 survey be impacted if -- if you later learned that your --  
10:01:13 2 your population of users was -- was slightly larger than  
10:01:17 3 reality?

10:01:17 4 A. It -- it wouldn't be impacted. So that happens  
10:01:22 5 frequently in surveys. You might end up with slightly more  
10:01:26 6 of one group than another group.

10:01:28 7 My understanding is that Dr. Becker -- or any  
10:01:33 8 damages analysis would be using results from payers and so  
10:01:37 9 that's the way my survey was set up to -- to delineate who  
10:01:41 10 is a payer and who is a non-payer, and whether you have  
10:01:45 11 more or less of those people in the sample doesn't matter.

10:01:48 12 Q. Well, how would -- how would it affect the  
10:01:52 13 participants' answers?

10:01:53 14 A. It wouldn't.

10:01:57 15 Q. Dr. Neal, why did you rely upon Dr. Akl to come up with  
10:02:00 16 the descriptions of the -- of the surveyed features in your  
10:02:04 17 survey?

10:02:04 18 A. Well, that's a very normal thing in developing a  
10:02:10 19 survey.

10:02:11 20 So if I go and do work for Procter & Gamble for  
10:02:15 21 Tide detergent, they have -- I'm the survey expert, but  
10:02:19 22 they have people that work at Procter & Gamble who are the  
10:02:24 23 experts in doing market research about detergent, and  
10:02:27 24 that's not what -- who I am.

10:02:28 25 So it's really exactly the same thing here, you

10:02:30 1 need someone like Dr. Akl who is a gaming expert and  
10:02:33 2 understands all these little technical nuances about how  
10:02:36 3 the games work, and they work in conjunction with me, the  
10:02:40 4 survey expert, so I can write very good questions without  
10:02:43 5 being a gaming guru.

10:02:47 6 Q. And, Dr. Neal, how confident are you that the survey  
10:02:53 7 participants understood the feature descriptions in your  
10:02:56 8 survey?

10:02:56 9 A. Extremely confident. Between Dr. Akl's input and then  
10:03:01 10 those face-to-face interviews I did with people where  
10:03:03 11 they -- actual players where they walked through the game,  
10:03:06 12 I was looking at their screen and we did it over Zoom, and  
10:03:11 13 I know a hundred percent that they understood these feature  
10:03:14 14 descriptions perfectly.

10:03:15 15 Q. Dr. Neal, do any of the questions that -- that opposing  
10:03:17 16 counsel asked on your cross change any of the opinions that  
10:03:22 17 you shared with this jury in your direct examination?

10:03:26 18 A. They do not.

10:03:27 19 Q. Thank you.

10:03:28 20 MS. SMITH: We'll pass the witness, Your Honor.

10:03:31 21 THE COURT: All right. Is there further  
10:03:32 22 cross-examination?

10:03:33 23 MR. KOHM: No, Your Honor.

10:03:33 24 THE COURT: All right. You may step down,  
10:03:40 25 Dr. Neal.

10:03:40 1 Plaintiff, call your next witness.

10:03:45 2 MS. LUDLAM: Yes, Your Honor, we'd call --  
10:03:47 3 Plaintiffs call Andrew Sheppard.

10:03:49 4 THE COURT: By deposition?

10:03:50 5 MS. LUDLAM: I'm sorry, I believe he's coming.

10:03:52 6 THE COURT: He's coming in?

10:03:54 7 MS. LUDLAM: Yes.

10:03:56 8 THE COURT: All right.

10:03:57 9 MS. SMITH: Your Honor, I apologize, one  
10:03:59 10 housekeeping matter, can Dr. Neal be excused?

10:04:01 11 THE COURT: Any objection from Defendant?

10:04:03 12 MR. KOHM: No, Your Honor.

10:04:07 13 THE COURT: All right. Dr. Neal may be excused.

10:04:09 14 MS. SMITH: Thank you, Your Honor.

10:04:10 15 THE COURT: Mr. Sheppard, if you'll come forward  
10:04:13 16 and be sworn, please.

10:04:31 17 (Witness sworn.)

10:04:32 18 THE COURT: Please come around. Have a seat on  
10:04:34 19 the witness stand.

10:04:38 20 Are there binders for this witness, counsel?

10:04:42 21 MS. LUDLAM: No, Your Honor, there are not.

10:04:44 22 THE COURT: All right. Then you may proceed with  
10:04:46 23 your direct examination.

10:04:47 24 MS. LUDLAM: Thank you.

10:04:47 25 ANDREW SHEPPARD, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

10:04:47 1

10:04:48 2

BY MS. LUDLAM:

10:04:48 3

Q. Good morning, Mr. Sheppard.

10:04:50 4

A. Good morning.

10:04:50 5

Q. Can you please introduce yourself to the jury?

10:04:52 6

A. Yes. My name is Andrew Sheppard. I'm up from Austin,

10:04:55 7

Texas, where I live with my wife and our five-month-old

10:04:58 8

daughter.

10:04:59 9

Q. And are you aware that GREE and Supercell are involved

10:05:02 10

in a lawsuit?

10:05:02 11

A. I had heard, yes.

10:05:05 12

Q. And what is your relationship to GREE?

10:05:07 13

A. I am the former CEO of their U.S. business unit.

10:05:12 14

Q. And where are you currently employed, Mr. Sheppard?

10:05:14 15

A. I currently run my own consulting firm, Cedarview

10:05:18 16

Consulting, which provides advisory services to executives,

10:05:22 17

CEOs. I also serve on several boards, and I'm also an

10:05:27 18

active real estate investor and entrepreneur. Recently

10:05:31 19

sold the company about six months ago.

10:05:33 20

Q. And are you having to take time away from your

10:05:36 21

employment to be here today?

10:05:38 22

A. I am.

10:05:38 23

Q. And is GREE compensating you for your time away from

10:05:42 24

your employment?

10:05:42 25

A. GREE is reimbursing me for my time away from work and

10:05:46 1 also for travel expenses.

10:05:49 2 Q. Are you being paid for the time that you're sitting  
10:05:51 3 here today?

10:05:51 4 A. Definitely not.

10:05:52 5 Q. Do you have any financial interest in the outcome of  
10:05:54 6 this case?

10:05:55 7 A. No.

10:05:55 8 Q. Can you tell us a little bit about your background,  
10:05:57 9 Mr. Sheppard?

10:05:58 10 A. Certainly. I was born in Tokyo, Japan. And my father  
10:06:03 11 worked in oil, so we moved around a lot. Eventually, I  
10:06:06 12 ended up here in Texas and then bounced over to California.

10:06:10 13 Q. And, briefly, what is your educational background?

10:06:11 14 A. Background? I went to school at Pomona College, which  
10:06:17 15 is in Southern California, on a scholarship. I ended up  
10:06:22 16 majoring in economics, got my Bachelor of Arts. Then also  
10:06:26 17 studied abroad in the UK at Oxford.

10:06:30 18 And then for graduate school, I got my MBA from UC  
10:06:35 19 Berkeley, also on scholarship. And also studied abroad in  
10:06:37 20 Japan at that time, Hitotsubashi University.

10:06:38 21 Q. And after getting your MBA, how did you get into the  
10:06:42 22 gaming industry?

10:06:43 23 A. It was something I kind of found my way towards over  
10:06:46 24 time. So much of my school and early career was focused on  
10:06:50 25 strategy, strategy consulting. And what I found was I just

10:06:53 1 had a passion for it and an interest in it.

10:06:56 2 I ended up moving progressively into more senior  
10:07:00 3 roles, taking on more responsibility beyond strategy,  
10:07:04 4 product development, game design, also some creative  
10:07:07 5 development, and business management.

10:07:08 6 Most notable players would have been Electronic  
10:07:13 7 Arts, otherwise known as EA, and also Kabam.

10:07:15 8 Q. And when did you join GREE in the U.S.?

10:07:18 9 A. That would have been August 2014.

10:07:20 10 Q. And what was your title when you joined the U.S.  
10:07:22 11 business unit of GREE?

10:07:24 12 A. I joined as the chief operating officer, and then a  
10:07:27 13 year and a half later I was promoted to CEO.

10:07:31 14 Q. And are you still with GREE in the U.S. now?

10:07:33 15 A. No, I'm not. I left in August of 2017 when we decided  
10:07:38 16 to shut down the business.

10:07:39 17 Q. Can you please explain why -- what you were hired to do  
10:07:43 18 for GREE in the U.S.?

10:07:45 19 A. Yes. I was explicitly hired -- leaving Kabam to focus  
10:07:51 20 on stabilizing business and bringing it in line with the  
10:07:55 21 market.

10:07:55 22 Q. And what do you mean when you say you were brought in  
10:07:58 23 to stabilize and bring it in line with the U.S. market?

10:08:02 24 A. Really important to kind of set some context on the  
10:08:04 25 industry. The mobile gaming industry had matured



10:08:08 1 substantially from when GREE entered the U.S. market. It  
10:08:11 2 had moved from being a cottage industry with lots of small  
10:08:13 3 developers, to being a very mature one with very few  
10:08:14 4 developers building very expensive games and spending tons  
10:08:18 5 of money on marketing. And the GREE organization had not  
10:08:21 6 made that transition.

10:08:23 7 At Kabam, we had made that transition. So I was  
10:08:26 8 there to basically assess the business and help them  
10:08:29 9 reallocate resources.

10:08:30 10 Q. What do you mean you had to help them reallocate  
10:08:32 11 resources?

10:08:33 12 A. So the way that these businesses are set up, there's  
10:08:37 13 like three -- three pillars to the way they run. The first  
10:08:42 14 pillar is the games that are live. And in the case of  
10:08:45 15 GREE, they were getting rather old. They're generating  
10:08:49 16 revenue, they're generating profit, but they need to be  
10:08:50 17 staffed accordingly, basically to maximize profit.

10:08:54 18 And then there's a section of games that you have  
10:08:57 19 that are research and development. These are your next  
10:08:59 20 generation games, games that are really vital to the future  
10:09:03 21 health of the business. And those things are usually in  
10:09:06 22 flight already.

10:09:06 23 And then you have a third pillar, which is things  
10:09:10 24 that are even further out, trying to anticipate where the  
10:09:13 25 market is going.

10:09:13 1 And at GREE a lot of the resources were focused  
10:09:16 2 more on the existing games, and they were in a very  
10:09:18 3 expensive market, San Francisco, one of the most  
10:09:21 4 competitive labor markets in the world.

10:09:23 5 So we needed to build a way to bring those  
10:09:27 6 resources forward to new projects and ultimately build the  
10:09:30 7 future of the business.

10:09:31 8 Q. And what did the market look like at the time you  
10:09:34 9 joined GREE?

10:09:35 10 A. It was consolidating substantially. I think two things  
10:09:41 11 I just called out, which just kind of simply describe how  
10:09:44 12 the industry was different. One was that there was a rise  
10:09:46 13 of three-dimensional games, games that -- the early games  
10:09:50 14 were all 2D and kind of flat art. And the newer games were  
10:09:54 15 much more immersive and interactive and much more expensive  
10:09:59 16 to produce. So development budgets were through the roof.

10:10:02 17 And then the other side was marketing spent --  
10:10:05 18 marketing spent continues to be one of the largest  
10:10:08 19 components that businesses spend on in this category. And  
10:10:12 20 when I started, monthly budgets were about 100,000 a month  
10:10:16 21 for a very successful game. One of the games I worked on  
10:10:20 22 was top grossing in the world, and it was a 100,000 a month  
10:10:24 23 spent.

10:10:24 24 By the time I joined GREE, there were companies  
10:10:27 25 that were spending 20 to 30 to \$40 million a month on

10:10:31 1 marketing spent.

10:10:32 2 Q. And do you feel like you were able to accomplish your  
10:10:34 3 goals as CEO at U.S. -- in GREE U.S.?

10:10:37 4 A. Yes and no. Yes, we restructured the business, which  
10:10:42 5 was very difficult. Yes, we freed up resources to pursue  
10:10:46 6 new projects by canceling some projects that didn't have  
10:10:49 7 high potential.

10:10:51 8 Most importantly, we built a framework around all  
10:10:54 9 that by which people would understand that canceling  
10:10:58 10 projects is just part of the industry. It's the way things  
10:11:00 11 work.

10:11:01 12 And also that sunseting games that were already  
10:11:06 13 increasing revenue and profit was a natural part of the  
10:11:07 14 lifecycle, so that was good.

10:11:09 15 And we also recruited an incredible team, which  
10:11:13 16 was incredibly hard to hold on to in San Francisco, for the  
10:11:18 17 reasons I mentioned before.

10:11:19 18 But I would say in retrospect, the core assumption  
10:11:23 19 that we had in those years that we worked together was that  
10:11:26 20 we could bring in new talent to revitalize these older  
10:11:29 21 games and really change their trajectory.

10:11:32 22 And, yes, we brought in some great talent. We  
10:11:35 23 took games that were four, five, six years old and got them  
10:11:37 24 back into the top 10 grossing, top 50 grossing, which  
10:11:42 25 people did not expect.

10:11:42 1 But the underlying characteristics of the industry  
10:11:43 2 were such that we were losing users to other games. It was  
10:11:45 3 too competitive.

10:11:46 4 Q. And I think you referenced -- is it common in the  
10:11:50 5 industry to cancel games?

10:11:51 6 A. Yes. On the development side of things, where you're  
10:11:55 7 going from concepts to launch, it is, I would say, a  
10:11:59 8 majority, if not a super majority of projects, that get  
10:12:03 9 canceled.

10:12:04 10 Q. And what did you mean when you said sunsetting games?

10:12:07 11 A. Sunsetting games refers to games after they've  
10:12:10 12 launched. So once you determine that a game can be  
10:12:13 13 successful in the marketplace, you'll spend against it and  
10:12:16 14 grow it. And your whole goal is just to keep building the  
10:12:19 15 game as quickly as you can and try to get it as big as you  
10:12:23 16 can. The size that you build it to, ultimately determines  
10:12:25 17 how long it lives. And like all things, it has a life, and  
10:12:27 18 at the end of that life, you let it go.

10:12:30 19 Q. What's the average lifecycle of games in this market?

10:12:32 20 A. It varies substantially, but I would say that for games  
10:12:37 21 that are launched, three to five years.

10:12:40 22 Q. And are there games that last longer than that?

10:12:43 23 A. There are a minority of games that last longer than  
10:12:46 24 that.

10:12:47 25 Q. Is that the exception rather than the rule?

10:12:49 1 A. I definitely think that's the case.

10:12:51 2 Q. Okay. Mr. Sheppard, how long were you at GREE in the  
10:12:53 3 U.S.?

10:12:54 4 A. I was there for three years.

10:12:55 5 Q. And what happened at the end of those three years?

10:12:57 6 A. It was actually a very difficult thing to do, but I  
10:13:01 7 actually recommended shutting down the business.

10:13:03 8 Q. Why did you recommend shutting down the business?

10:13:05 9 A. So I'll have to walk through a few things. But just to  
10:13:08 10 reiterate the industry context, right, very high marketing  
10:13:12 11 costs. They were only going higher. Very high development  
10:13:15 12 costs, only going higher.

10:13:17 13 The resources that we freed up to pursue new  
10:13:20 14 projects had been allocated towards a game called Guardians  
10:13:22 15 of Haven. We were about three to six months late, I would  
10:13:25 16 say, on our development, relative to what we understood it  
10:13:28 17 needed to be successful.

10:13:29 18 But we did have it in beta, which is the last  
10:13:31 19 stage of development. And it was doing really well. Like  
10:13:35 20 day one retention was 50 percent. That's correlated with  
10:13:38 21 the game as a top five title. So we believed we could make  
10:13:42 22 it work. It was also sufficiently innovative to stand out  
10:13:46 23 in the marketplace.

10:13:47 24 So we entered -- the end of 2016, we're going to  
10:13:52 25 the annual planning process in Japan, which has all the

10:13:55 1 business unit leads like myself put together basically  
10:13:58 2 their proposal, their asks for what budget do you need in  
10:14:03 3 order to be successful in the coming year.

10:14:05 4 And I knew our delay had to impact -- we'd need  
10:14:07 5 more money for development and we'd need more marketing  
10:14:10 6 spend because costs were only going up.

10:14:13 7 And I also knew by way of my manager that Japan  
10:14:17 8 had launched two games very successfully. And those games  
10:14:21 9 needed head count and marketing, as well. And there just  
10:14:25 10 was not room to go all in on those games.

10:14:29 11 So I had asked my team to make very difficult  
10:14:31 12 decisions, oftentimes to the detriment of their own careers  
10:14:37 13 and roles.

10:14:37 14 And it's very important to me that you practice  
10:14:40 15 what you preach. And in this case I applied the same to  
10:14:41 16 myself. There was no way to fund those projects in Japan  
10:14:45 17 without sacrificing our business unit. And that's what I  
10:14:49 18 recommended.

10:14:49 19 Q. How did you feel about that recommendation?

10:14:51 20 A. You know, it was hard on a personal level. And I still  
10:14:54 21 feel that way. But on a professional level, it was the  
10:14:59 22 high integrity, right thing to do. It was especially hard  
10:15:05 23 just because we were so close with Guardians of Haven, but  
10:15:09 24 we won't be able to tell that story.

10:15:11 25 Q. And when did all of this happen?

10:15:13 1 A. This -- the early questions around what to do started  
10:15:23 2 in the end of '16. I developed the recommendation for  
10:15:26 3 Japan in early -- sorry, early summer of '17. And then  
10:15:31 4 at -- Japan was surprised, so we had to talk through why it  
10:15:35 5 was a good recommendation, but then by the end of summer,  
10:15:38 6 we had basically acted on it.

10:15:40 7 Q. Okay. Thank you, Mr. Sheppard.

10:15:42 8 MS. LUDLAM: Your Honor, I pass the witness.

10:15:47 9 THE COURT: All right. Cross-examination.

10:15:55 10 MR. SACKSTEDER: Thank you, Your Honor.

10:15:55 11 CROSS-EXAMINATION

10:15:55 12 BY MR. SACKSTEDER:

10:15:55 13 Q. Good morning, Mr. Sheppard.

10:15:58 14 A. Good morning.

10:16:00 15 MS. TURNER: Your Honor, may I approach?

10:16:01 16 MR. SACKSTEDER: Oh, yes, binders --

10:16:03 17 THE COURT: You may approach with binders.

10:16:22 18 All right. Mr. Sacksteder, you may now proceed  
10:16:25 19 with cross-examination.

10:16:26 20 MR. SACKSTEDER: Thank you, Your Honor.

10:16:26 21 Q. (By Mr. Sacksteder) Mr. Sheppard, when you joined the  
10:16:28 22 GREE U.S. operation, that operation was not commercially  
10:16:31 23 successful, correct?

10:16:32 24 A. No, I would not agree with that.

10:16:33 25 Q. It wasn't meeting its goals, correct?

10:16:35 1 A. Yes.

10:16:37 2 Q. And when you left, the U.S. operation of GREE was not  
10:16:43 3 commercially successful, correct?

10:16:44 4 A. I would not agree with it as phrased.

10:16:47 5 Q. It was not meeting its goals, correct?

10:16:49 6 A. Yes.

10:16:49 7 Q. And it had a few games that were old games that were  
10:16:54 8 not doing very well in the market, correct?

10:16:58 9 A. Yes, they were off by a couple percent.

10:17:01 10 Q. And it had one game that was in development. You  
10:17:05 11 mentioned Guardians of Haven, correct?

10:17:06 12 A. Yes.

10:17:06 13 Q. And Guardians of Haven was, you said, three to six  
10:17:12 14 months behind, correct?

10:17:13 15 A. Yes.

10:17:13 16 Q. All right. And that game was never released, correct?

10:17:16 17 A. Unfortunately, no.

10:17:17 18 Q. And -- and you shut down the company, correct?

10:17:19 19 A. I recommended that, yes.

10:17:21 20 Q. All right. And then the company was shut down,  
10:17:23 21 correct?

10:17:23 22 A. Yes.

10:17:24 23 MR. SACKSTEDER: All right. Mr. Smith, can we  
10:17:26 24 look at Slide 8 from GREE's opening?

10:17:31 25 Q. (By Mr. Sacksteder) This is also an exhibit from



10:17:33 1 Mr. Araki's testimony. If you look at the right-hand side,  
10:17:38 2 in 2012, Modern War, Crime City, and Knights & Dragons were  
10:17:44 3 GREE U.S. games, correct?

10:17:45 4 A. Yes.

10:17:45 5 Q. And Modern War was a game that was developed by a  
10:17:50 6 company called Funzio that GREE acquired, correct?

10:17:54 7 A. Yes.

10:17:54 8 Q. And Crime City was developed by a company called Funzio  
10:17:59 9 that GREE acquired, correct?

10:18:00 10 A. Yes.

10:18:01 11 Q. And Knights & Dragons was developed by a company called  
10:18:07 12 IUGO, correct?

10:18:07 13 A. Yes.

10:18:07 14 Q. And then GREE bought the rights to the game, correct?

10:18:10 15 A. Yes.

10:18:10 16 MR. SACKSTEDER: Can we look at DX-47, please,  
10:18:17 17 Mr. Smith?

10:18:17 18 Q. (By Mr. Sacksteder) This is an email from you to  
10:18:20 19 Mr. Araki in April of 2017, correct?

10:18:23 20 A. Yes.

10:18:24 21 Q. Look at the top. Then at the bottom, it shows the  
10:18:30 22 report from something called App Annie, correct?

10:18:34 23 A. Yes.

10:18:34 24 Q. And App Annie is a service that keeps track on how well  
10:18:38 25 games are doing, correct?

10:18:40 1 A. That's right, yes.

10:18:42 2 Q. These are the U.S. figures, correct?

10:18:50 3 A. I'm not sure of that.

10:18:51 4 Q. This shows DragonSoul, Knights & Dragons, Crime City,  
10:18:57 5 Modern War and Kingdom Age, correct?

10:19:00 6 A. Yes.

10:19:01 7 Q. And those are listed with one exception as being Funzio  
10:19:04 8 Games, correct?

10:19:05 9 A. Yes.

10:19:05 10 Q. And at the time DragonSoul was ranked 268 in terms of  
10:19:11 11 revenue, correct?

10:19:11 12 A. Yes, for revenue over the last seven days.

10:19:13 13 Q. And it shows the revenue as being iOS and Google Play  
10:19:18 14 on the right side, correct?

10:19:20 15 A. That's correct.

10:19:20 16 Q. And those are the two platforms where you distribute  
10:19:24 17 games in the U.S., right?

10:19:25 18 A. Yes.

10:19:25 19 Q. And one is the App Store for Apple phones and the other  
10:19:28 20 is for Android phones, correct?

10:19:30 21 A. You got it.

10:19:31 22 Q. All right. And then Knights & Dragons was ranked  
10:19:36 23 424th, correct?

10:19:37 24 A. It was.

10:19:37 25 Q. And Crime City was 586th?

10:19:39 1 A. Yes.

10:19:39 2 Q. And Modern War was 609th?

10:19:43 3 A. Yes.

10:19:43 4 Q. And Kingdom Age was 911th?

10:19:46 5 A. Yes.

10:19:46 6 Q. And that's not very good, is it, sir?

10:19:48 7 A. No, I wouldn't -- I wouldn't characterize it as such.

10:19:52 8 Q. Kingdom Age made \$5,000.00 in that week, correct?

10:19:56 9 A. Yes, in that week.

10:19:58 10 Q. And DragonSoul made about 60, correct?

10:20:01 11 A. In that week, yes.

10:20:03 12 MR. SACKSTEDER: You can take that down,

10:20:05 13 Mr. Smith.

10:20:06 14 Q. (By Mr. Sacksteder) So the only game that GREE in the

10:20:13 15 U.S. had in development at the time the company was shut

10:20:17 16 down was called Guardians of Haven, correct?

10:20:19 17 A. That is right.

10:20:20 18 Q. By the way, those other games that we looked at the

10:20:23 19 rankings, those weren't in the top 10, right?

10:20:26 20 A. We got them back to the top 10 at a point over the

10:20:31 21 three-year span. In that seven-day period, no.

10:20:33 22 Q. They were not in the top 10 -- they were not in the top

10:20:35 23 50?

10:20:36 24 A. Not at that time, no.

10:20:37 25 Q. Or hundred or 200, correct?

10:20:39 1 A. Not in that seven day period, no, sir.

10:20:42 2 Q. So Guardians of Haven was not going to be released  
10:20:45 3 under the GREE brand, correct?

10:20:48 4 A. Yes, that's correct.

10:20:52 5 Q. Okay.

10:20:53 6 MR. SACKSTEDER: Can we look at DX-232, and  
10:20:57 7 specifically Slide 6.

10:21:01 8 Q. (By Mr. Sacksteder) And that shows a logo for  
10:21:02 9 something called Free Hive, right?

10:21:06 10 A. Yes.

10:21:07 11 Q. And that is the brand that Guardians of Haven was going  
10:21:09 12 to be published under, correct?

10:21:11 13 A. Yes.

10:21:12 14 Q. And the reason for that was that the market had  
10:21:16 15 negative connotations for the GREE brand, correct?

10:21:20 16 A. No, I wouldn't phrase it that way.

10:21:23 17 Q. You were never going to put the GREE brand on Guardians  
10:21:26 18 of Haven, correct?

10:21:26 19 A. We explored it at one point, but we decided not to.

10:21:31 20 Q. And there was no positive association with the GREE  
10:21:35 21 brand in the U.S.?

10:21:36 22 A. Yes, I do agree that's true.

10:21:39 23 Q. There were some negative associations with the GREE  
10:21:44 24 brand in the U.S., correct?

10:21:45 25 A. Yes.

10:21:52 1 Q. You said that Guardians of Haven was in beta testing;  
10:22:02 2 is that correct?

10:22:02 3 A. That's correct.

10:22:02 4 Q. That's before you started releasing it commercially,  
10:22:07 5 right?

10:22:07 6 A. It is.

10:22:07 7 Q. And it was never released commercially, correct?

10:22:09 8 A. We decided to shut down the business before the beta  
10:22:13 9 concluded.

10:22:14 10 Q. And one of the reasons why Guardians of Haven was never  
10:22:16 11 released is because there was some skepticism at GREE in  
10:22:19 12 Japan regarding the failure of earlier U.S.-GREE games to  
10:22:25 13 meet their targets, correct?

10:22:27 14 A. There were questions around the underperformance of the  
10:22:30 15 older titles, but those were managed by different teams,  
10:22:35 16 and the question was more around whether the added  
10:22:37 17 investment to get Guardians to be complete would be a good  
10:22:46 18 return, relative to other investments.

10:22:47 19 MR. SACKSTEDER: Can we look at DX-36, Mr. Smith?

10:22:50 20 Q. (By Mr. Sacksteder) DX-36 is a report that you got  
10:22:53 21 from an outfit called Magid, correct?

10:22:59 22 A. Yes.

10:22:59 23 Q. And that's a consulting and survey organization,  
10:23:02 24 correct?

10:23:02 25 A. Yes.

10:23:02 1 Q. And it says MCN Beta Gameplay Exploration down below,  
10:23:12 2 correct?

10:23:12 3 A. Yes.

10:23:12 4 Q. And the date is May of 2017?

10:23:14 5 A. Yes.

10:23:15 6 Q. And MCN stands for midcore new, which is Guardians of  
10:23:20 7 Haven, right?

10:23:20 8 A. Midcore next.

10:23:21 9 Q. Midcore next, okay. And that's -- that's the same  
10:23:24 10 thing; that's your internal name for Guardians of Haven,  
10:23:28 11 correct?

10:23:28 12 A. Yes, sir.

10:23:28 13 MR. SACKSTEDER: Can we turn to -- anyway. One of  
10:23:35 14 the conclusions from the analysis that Magid did that was  
10:23:40 15 none of the three different game modes that existed in  
10:23:43 16 Guardians of Haven were individually compelling enough to  
10:23:45 17 play instead of the games of respected leaders in the  
10:23:49 18 market, correct?

10:23:50 19 A. I recall that comment, yes.

10:23:57 20 Q. And that's a comment from Magid, which provided this  
10:24:00 21 report on Guardians of Haven in May of 2017, correct?

10:24:02 22 A. Yes, it was one of several.

10:24:05 23 Q. All right.

10:24:05 24 MR. SACKSTEDER: Can we turn to Page 5, please?

10:24:07 25 Q. (By Mr. Sacksteder) If you look at the part that says

10:24:13 1 4 out of 7, the people that actually analyzed the game said  
10:24:17 2 4 out of 7 of them would stop playing if they hadn't -- if  
10:24:20 3 they didn't have to do it for their job, right?

10:24:23 4 A. Yes, that's what it says.

10:24:25 5 Q. And then there is a conclusion that says the modes  
10:24:29 6 don't feel connected or that players would benefit from  
10:24:32 7 playing multiple modes. This feels like a missed  
10:24:36 8 opportunity for MCN to really stand out as an experience.

10:24:41 9 You didn't dispute that conclusion when you got it  
10:24:44 10 from Magid, did you?

10:24:45 11 A. No. In fact, we had plans to address it because it had  
10:24:49 12 surfaced in our regular study, and it was part of the  
10:24:53 13 reason why we needed three to six more months.

10:24:54 14 Q. So this was a problem with the game that had been  
10:24:57 15 developed that was causing it not to be ready to be  
10:25:00 16 released, correct?

10:25:00 17 A. I wouldn't characterize it as a problem, but it was a  
10:25:04 18 definite need.

10:25:05 19 Q. It was something you had to do before you could release  
10:25:08 20 it, correct?

10:25:08 21 A. Absolutely.

10:25:09 22 Q. And because you couldn't release it at that time, you  
10:25:11 23 couldn't release it at all, right?

10:25:14 24 Let me rephrase the question.

10:25:16 25 Because you couldn't release it at that time, you

10:25:17 1 ended up not releasing it at all, correct?

10:25:21 2 A. We went into the planning process not being able to  
10:25:24 3 release it.

10:25:26 4 MR. SACKSTEDER: Can we see DX-35, please?

10:25:29 5 Q. (By Mr. Sacksteder) DX-35 is an email to you from a  
10:25:34 6 person named Michael Liang, correct?

10:25:40 7 A. Yes.

10:25:41 8 MR. SACKSTEDER: And if you go a little bit  
10:25:44 9 farther down, Mr. Smith.

10:25:45 10 Q. (By Mr. Sacksteder) You'll see that Michael Liang is  
10:25:49 11 the customer insights manager for the U.S. GREE operation,  
10:25:52 12 correct?

10:25:52 13 A. Yes.

10:25:52 14 MR. SACKSTEDER: It's -- actually, if we could go  
10:25:54 15 down -- we're a little bit off the screen there.

10:25:57 16 Q. (By Mr. Sacksteder) And the customer insights manager  
10:26:00 17 is -- his job is to get insights from the customers about  
10:26:05 18 the games, correct?

10:26:07 19 A. Both market researchers and customers, yes.

10:26:10 20 Q. Okay. And in this case, he is actually sending you  
10:26:12 21 with this email the -- the research report we just looked  
10:26:16 22 at, correct?

10:26:16 23 A. Yes, but -- yes.

10:26:21 24 Q. Yeah, it says GREE MCN Beta Gameplay Exploration, May  
10:26:29 25 2017 at the top, correct?



10:26:30 1 A. Yes.

10:26:30 2 Q. And he wrote in the cover email where he sent that to  
10:26:34 3 you that the analysis is consistent with what we've heard  
10:26:37 4 from players, correct?

10:26:38 5 A. Correct. Which is why we knew that we had to address  
10:26:41 6 this.

10:26:41 7 MR. SACKSTEDER: Move to strike everything after  
10:26:44 8 "yes" is -- or after "correct" as non-responsive.

10:26:50 9 THE COURT: Sustained.

10:26:51 10 Q. (By Mr. Sacksteder) And the players that are  
10:26:58 11 referenced are the beta tester players who were testing the  
10:27:02 12 game before it went out to commercial release, correct?

10:27:04 13 A. For this Magid study?

10:27:06 14 Q. Well, Michael Liang said their feedback is very  
10:27:11 15 consistent with what we've heard from players?

10:27:13 16 A. Ah, yes, that was.

10:27:14 17 Q. And the players are the other players that were beta  
10:27:17 18 testing the game, correct?

10:27:18 19 A. Yes, sir.

10:27:18 20 Q. And so the comments that were made in the report were  
10:27:21 21 consistent with what other players said, right?

10:27:24 22 A. Yes, sir.

10:27:24 23 Q. And you didn't release the game, right?

10:27:27 24 A. Yes, sir.

10:27:28 25 Q. And as you testified in July of 2017, the GREE U.S.

10:27:34 1 operation was shut down, correct?

10:27:36 2 A. Yes, sir.

10:27:36 3 Q. And you mentioned marketing costs before, correct?

10:27:39 4 A. Yeah.

10:27:39 5 Q. And is one place where a game company typically gets  
10:27:43 6 the money to pay marketing costs from the success of its  
10:27:48 7 previous games?

10:27:49 8 A. That is one place, yes.

10:27:51 9 Q. Yes. So if a company has games that are successful on  
10:27:54 10 the market, they have more money that they can use for  
10:27:57 11 marketing other games, correct?

10:28:00 12 A. Yes.

10:28:00 13 Q. And GREE had problems with having enough money for  
10:28:03 14 marketing costs, right?

10:28:05 15 A. GREE had a budget allocated as a public company and was  
10:28:11 16 held to those expectations in the marketplace with  
10:28:17 17 investors and was operating at a disadvantage, relative to  
10:28:21 18 companies that weren't public who could spend unprofitably,  
10:28:26 19 which was the tactic at that time.

10:28:29 20 Q. The GREE U.S. operation did not have enough money for  
10:28:30 21 marketing costs, correct?

10:28:30 22 A. Yes, it needed more.

10:28:32 23 Q. And it would have had more if it had had more  
10:28:35 24 successful games, correct?

10:28:36 25 A. Within the business unit, we could've self-funded with

10:28:38 1 more profit --

10:28:39 2 Q. But you didn't -- you didn't, right?

10:28:41 3 A. We did not.

10:28:43 4 MR. SACKSTEDER: May we see DX-34, please?

10:28:55 5 Q. (By Mr. Sacksteder) You prepared DX-34?

10:29:02 6 A. Yes, largely.

10:29:04 7 Q. Okay. And it references a BoD meeting in Tokyo.

10:29:11 8 That's board of directors?

10:29:12 9 A. Yes.

10:29:13 10 Q. All right. And -- And so you created this document  
10:29:14 11 some time before May 24th, correct?

10:29:17 12 A. Yes, I would assume so.

10:29:20 13 Q. And it was in 2017, correct?

10:29:25 14 A. Must have been.

10:29:26 15 Q. All right. And you end up in this document  
10:29:29 16 recommending that GREE shut down its U.S. operations,  
10:29:33 17 correct?

10:29:33 18 A. Can I see the rest of the document?

10:29:39 19 Q. You had three plans, and you selected the one that  
10:29:42 20 ended up shutting down the operation, correct?

10:29:44 21 A. I believe this document is the plan we went through to  
10:29:48 22 get to a recommendation, and that there are three plans  
10:29:51 23 here that we all analyzed.

10:29:53 24 Q. And the one that was selected was to shut down?

10:29:55 25 A. The one I recommended was the shutdown, yes.

10:30:00 1 MR. SACKSTEDER: Can we see DX-33, please?

10:30:04 2 Q. (By Mr. Sacksteder) This is from January 2016. You --  
10:30:09 3 you drafted at least a large part of this document,  
10:30:12 4 correct?

10:30:12 5 A. Yes, I drafted it.

10:30:13 6 Q. And it is a two-year retrospective, looking backwards  
10:30:17 7 from 2016?

10:30:22 8 A. Yes.

10:30:22 9 Q. Okay. And at the time you drafted the document, the  
10:30:25 10 business -- business was underperforming and profits were  
10:30:28 11 under target, correct?

10:30:28 12 A. Yes, by a few percent.

10:30:30 13 Q. All right. And there were four games on the market at  
10:30:32 14 the time?

10:30:32 15 A. Yes, it says that here.

10:30:41 16 Q. And they were underperforming, correct?

10:30:42 17 A. Collectively, they were under by a few percent.

10:30:45 18 Q. And in the first paragraph, starting at the second  
10:30:51 19 sentence, you wrote that: A systematic review of these  
10:30:55 20 games and the organization supporting them identified a  
10:30:56 21 number of issues ranging from misalignment of business  
10:30:59 22 goals, poor product and/or marketing strategy, and general  
10:31:03 23 staffing issues, correct?

10:31:05 24 A. Those were the -- those were the issues that I  
10:31:10 25 referenced earlier when I joined, that we had to address.

10:31:13 1 Q. Those were the problems that existed in 2016, correct?

10:31:19 2 A. No. These were the issues that were there when I  
10:31:23 3 arrived.

10:31:24 4 Q. Okay. So in 2014, all these problems existed?

10:31:28 5 A. Yes. In varying degrees, yes.

10:31:33 6 Q. Clash of Clans was a successful game when you joined  
10:31:36 7 GREE, correct?

10:31:37 8 A. It's a great game, yes.

10:31:38 9 Q. It was successful a couple years before you joined  
10:31:42 10 GREE, correct?

10:31:43 11 A. It was, yes.

10:31:43 12 Q. And it continued to be successful through the whole  
10:31:47 13 time you were there, correct?

10:31:48 14 A. It has, yeah.

10:31:49 15 Q. And would you agree with me that the things that make  
10:31:51 16 Clash of Clans a successful game are that it was first to  
10:31:54 17 market, had a high quality game, really accessible art  
10:31:59 18 style, great user interface design, platform support, and  
10:32:04 19 marketing spend?

10:32:04 20 A. Yes, I -- those words sound like something I would say.

10:32:08 21 Q. Okay. And would you agree that Clash of Clans was  
10:32:12 22 first to market?

10:32:13 23 A. For that style of game, yes.

10:32:15 24 Q. All right. And then let's talk about Clash Royale.

10:32:19 25 Would you agree that the things that make Clash

10:32:23 1 Royale successful as a game are the same things that I just  
10:32:25 2 walked through with Clash of Clans?

10:32:27 3 A. Not having all six or seven of them in my mind, but,  
10:32:32 4 yes, I would say, yes.

10:32:39 5 Q. All right. And Clash of Clans was also first to market  
10:32:41 6 in its style of game, correct?

10:32:43 7 A. Yes, on the mobile phone.

10:32:45 8 Q. And Clash of Clans is a -- would you call it a  
10:32:49 9 real-time strategy game?

10:32:50 10 A. Yes, that was the phrase I used, although that's my --  
10:32:54 11 my phrase.

10:32:54 12 Q. And it's not a turn-based game, right? You don't take  
10:32:59 13 turns in Clash of Clans?

10:33:00 14 A. That's correct yes.

10:33:01 15 Q. Everybody -- both players play at the same time?

10:33:01 16 A. I'm sorry, Clash Royale or --

10:33:03 17 Q. I'm talking about Clash Royale. Sorry.

10:33:05 18 A. Okay. Yes.

10:33:06 19 Q. Clash Royale is not a turn-based game, and everybody  
10:33:10 20 plays -- both players play at the same time?

10:33:12 21 A. Yes, sir, that's correct.

10:33:14 22 Q. All right. Thank you.

10:33:14 23 MR. SACKSTEDER: Can we look at DX-1 -- DX-1234,  
10:33:19 24 please?

10:33:19 25 Q. (By Mr. Sacksteder) And DX-1234 is an email that you

10:33:26 1 are a recipient of, and you have sent some of the emails in  
10:33:31 2 this string, correct?

10:33:31 3 A. Yes, it looks to be the case.

10:33:36 4 Q. All right. And it's talking about Clash of Clans,  
10:33:38 5 correct?

10:33:38 6 A. I'm not familiar with this one, so...

10:33:45 7 Q. You -- your -- your name is listed as a recipient at  
10:33:49 8 the top there, correct?

10:33:50 9 A. Yes, definitely.

10:33:51 10 Q. And the date is March of 2015?

10:33:52 11 A. Yes. I just haven't seen this before. Hold on -- I  
10:33:57 12 mean, not recently.

10:33:59 13 Q. Okay.

10:33:59 14 MR. SACKSTEDER: If we could go a little farther  
10:34:02 15 down in the document, Mr. Smith.

10:34:04 16 Q. (By Mr. Sacksteder) Where you say --

10:34:06 17 MR. SACKSTEDER: A little farther up.

10:34:10 18 Q. (By Mr. Sacksteder) Where you say I am supportive?

10:34:12 19 A. Yes.

10:34:12 20 Q. And then you say: Could you keep Keith on CC for RPG  
10:34:18 21 and me for Strategy.

10:34:19 22 Correct?

10:34:19 23 A. Yes.

10:34:20 24 Q. And CC means carbon copy on the email, right?

10:34:24 25 A. In this case, yes.

10:34:26 1 Q. Yeah, okay.

10:34:26 2 MR. SACKSTEDER: Now let's go down a little  
10:34:29 3 farther.

10:34:29 4 Q. (By Mr. Sacksteder) The thing that you were saying you  
10:34:32 5 were supportive of is this part of the email, correct?

10:34:34 6 A. Yeah, it must be. I haven't had a chance to read it  
10:34:40 7 all, but, yes.

10:34:41 8 Q. And -- and it came from Ryotaro Shima; is that right?

10:34:48 9 A. Yes.

10:34:48 10 Q. And that was sort of your second in command at -- at  
10:34:51 11 GREE U.S.?

10:34:51 12 A. Yes.

10:34:52 13 Q. And there are some suggestions that he's making and  
10:34:55 14 that you later said you were supportive of, correct?

10:34:58 15 A. Yes.

10:34:59 16 Q. All right. And he says in the first paragraph: I'm  
10:35:03 17 thinking of asking Atsuro and Yasushi to tag and prepare a  
10:35:11 18 research document.

10:35:12 19 Correct?

10:35:12 20 A. Yes.

10:35:13 21 Q. And down below, it says: We can ask them to work on  
10:35:17 22 deep-dive analysis on metastructure of Clash of Clans.

10:35:20 23 Correct?

10:35:20 24 A. Yes.

10:35:20 25 Q. And you were supportive of that, correct?



10:35:23 1 A. Yeah, I was.

10:35:24 2 Q. And that's because Clash of Clans was a very successful  
10:35:28 3 game, and people in this -- this industry try to learn  
10:35:31 4 about the successful games, right?

10:35:32 5 A. Absolutely. I mean, there's something to learn from  
10:35:36 6 every game.

10:35:37 7 MR. SACKSTEDER: Can we look at 1223, please?

10:35:39 8 Q. (By Mr. Sacksteder) 1223 is an email in the March 2015  
10:35:51 9 time frame, correct?

10:35:52 10 A. Yes.

10:35:54 11 Q. And -- and its subject is: Clash of Clans, designing  
10:35:59 12 games that people will play for years.

10:36:02 13 Correct?

10:36:03 14 A. Yes.

10:36:03 15 Q. And this describes a presentation on Clash of Clans  
10:36:10 16 that -- at an industry event, correct?

10:36:12 17 A. Yes, it looks like it.

10:36:14 18 Q. And you forwarded the email to a person named  
10:36:19 19 Mr. McKay -- Gary McKay, correct?

10:36:24 20 A. Yes.

10:36:24 21 Q. And he is a GREE employee, correct?

10:36:27 22 A. I'm embarrassed to say I don't remember. So I assume  
10:36:33 23 so, yes.

10:36:35 24 Q. We won't tell.

10:36:36 25 A. Thank you.

10:36:36 1 Q. The -- where it says key principles in the email, it's  
10:36:41 2 on the next page. At the top, it says -- and this is  
10:36:49 3 talking about Clash of Clans and Supercell, correct?

10:36:53 4 A. I assume so.

10:36:55 5 Q. It's also in your binder if you need to look at it,  
10:36:57 6 sir.

10:36:57 7 A. Yeah, sorry. I just want to make sure I answer  
10:37:00 8 correctly.

10:37:01 9 Q. Of course. It's 1223.

10:37:10 10 A. Just go off the screen. It's faster.

10:37:19 11 Yes. Okay, yes.

10:37:21 12 Q. All right. Where it says key principles up there, the  
10:37:25 13 third sentence says, about Supercell: The earliest focus  
10:37:30 14 was always on the core loop, not just developing it, but  
10:37:37 15 constantly looking to improve the core look -- loop.

10:37:40 16 Correct?

10:37:40 17 A. Yes, it says that.

10:37:41 18 Q. All right. And then there's another point down at the  
10:37:44 19 bottom of the page.

10:37:48 20 MR. SACKSTEDER: The -- the last paragraph in the  
10:37:49 21 heading, Mr. Smith. Thank you.

10:37:51 22 Q. (By Mr. Sacksteder) And this one has a heading that  
10:37:54 23 indicates surprise. Would you say that's fair?

10:37:57 24 A. That's -- that's a great -- yes.

10:38:03 25 Q. Yeah, it's about a statistic, correct?

10:38:05 1 A. Yes.

10:38:06 2 Q. And it says: 1 out of 10, 10 percent, players who  
10:38:10 3 started playing in March 2012 still playing the game today.

10:38:15 4 Correct?

10:38:15 5 A. Yes.

10:38:16 6 Q. And then it says: That's the two-year retention  
10:38:20 7 metric. Yikes.

10:38:21 8 Right?

10:38:21 9 A. Yes.

10:38:22 10 Q. That means that Supercell's Clash of Clans's game was a  
10:38:25 11 really good game that was retaining users at a very high  
10:38:29 12 level --

10:38:29 13 A. It was.

10:38:29 14 Q. -- surprisingly high level from 2012 until this email  
10:38:34 15 in 2015, correct?

10:38:35 16 A. Yes, I believe Gary characterized it that way, yes.

10:38:39 17 MR. SACKSTEDER: And DX-1236, please, Mr. Smith.

10:38:42 18 Q. (By Mr. Sacksteder) And DX-1236 is another string of  
10:38:53 19 emails that you participated in, correct?

10:38:55 20 A. It looks to be, yes.

10:38:56 21 Q. And, again, if you need to confirm, it's in your  
10:38:59 22 binder.

10:38:59 23 And in -- you get an email in the middle of the  
10:39:09 24 page from Kevin Schmid, correct?

10:39:15 25 A. Yes.

10:39:15 1 Q. And he's a GREE employee or was at the time?

10:39:18 2 A. I assume so.

10:39:20 3 Q. And he says: The strength of appropriative art style  
10:39:26 4 like Clash of Clans is -- is a great appealing art style  
10:39:30 5 that you own.

10:39:35 6 Is that correct?

10:39:35 7 A. Sorry, it moved away from the --

10:39:38 8 Q. Oh, there you go.

10:39:39 9 A. Oh, there it is. Thank you.

10:39:44 10 Q. And that's what Mr. Schmid said, correct?

10:39:47 11 A. Yes.

10:39:48 12 Q. And on Page 3, Mr. Schmid says: Not a lot of games out  
10:39:59 13 there have a strong internally created IP, and the ones  
10:40:04 14 that do are very light, Clash of Clans?

10:40:07 15 A. Yes.

10:40:07 16 Q. And you agree that Clash of Clans has a strong  
10:40:11 17 internally created IP, correct?

10:40:13 18 A. Yes, definitely Clash of Clans is strong.

10:40:15 19 Q. All right.

10:40:15 20 MR. SACKSTEDER: Let's look at 1232.

10:40:18 21 Q. (By Mr. Sacksteder) And this is another email string  
10:40:28 22 that you participated in in 2015, correct?

10:40:33 23 A. Yes.

10:40:34 24 Q. And this discusses a project called Shadowlands; do you  
10:40:42 25 see that?

10:40:42 1 A. Yes.

10:40:42 2 Q. Was that a GREE game that was never released?

10:40:46 3 A. That was a project that was canceled in development,  
10:40:49 4 yes.

10:40:55 5 MR. SACKSTEDER: Let's go to 1221.

10:40:56 6 Q. (By Mr. Sacksteder) And on the -- okay. The -- the  
10:41:04 7 subject line is Update Clash of Clans Analysis?

10:41:08 8 A. Yes.

10:41:08 9 Q. And this is before your time. This is in 2012,  
10:41:12 10 correct?

10:41:12 11 THE COURT: Would you speak up, counsel?

10:41:13 12 MR. SACKSTEDER: Yes, I apologize, Your Honor.

10:41:15 13 Q. (By Mr. Sacksteder) This is in 2012 before you joined  
10:41:17 14 the company, correct?

10:41:18 15 A. Yes, sir.

10:41:19 16 Q. All right. And you later became the chief operating  
10:41:23 17 officer and then CEO of -- of GREE International and then  
10:41:29 18 GREE International Entertainment, correct?

10:41:34 19 A. Yes, sir.

10:41:34 20 Q. All right. And the first line of the email talks about  
10:41:35 21 it being a follow-up to the Clash of Clans presentation?

10:41:38 22 MS. LUDLAM: Objection, Your Honor. Foundation.

10:41:43 23 THE COURT: Do you have a response?

10:41:45 24 MR. SACKSTEDER: I'm just asking him what the  
10:41:47 25 pre-admitted document says.

10:41:49 1 MS. LUDLAM: Your Honor, he's admitted he did not  
10:41:52 2 receive it; it was before his time.

10:41:54 3 THE COURT: Well, it's pre-admitted. Counsel can  
10:42:09 4 ask him about it, but effectively, all he can do is just  
10:42:15 5 say this is there or this is not there, since he doesn't  
10:42:19 6 have any personal knowledge of the email itself or the  
10:42:21 7 conversation.

10:42:22 8 MR. SACKSTEDER: Understood, Your Honor.

10:42:22 9 THE COURT: So to that limited extent, I'll allow  
10:42:27 10 it. Otherwise, I won't.

10:42:29 11 MS. LUDLAM: Thank you.

10:42:30 12 Q. (By Mr. Sacksteder) The first line that's highlighted  
10:42:32 13 there talks about a follow-up to the Clash of Clans  
10:42:34 14 presentation, correct?

10:42:35 15 A. Yes, that's there.

10:42:45 16 MR. SACKSTEDER: Can we see DX-215, please?

10:42:48 17 Q. (By Mr. Sacksteder) If you go about halfway down,  
10:42:55 18 you'll see that this was an email that you received and  
10:42:59 19 then later it looks like you forwarded it on, correct?

10:43:03 20 A. Yes.

10:43:04 21 Q. And the subject line is, again, that Clash of Clans,  
10:43:09 22 designing games that people will play for years, correct?

10:43:14 23 A. Yes.

10:43:15 24 Q. And this is a longer -- and if you want to look at it  
10:43:20 25 in your binder, feel free -- this is kind of a longer

10:43:24 1 version of the report from the presentation on Clash of  
10:43:26 2 Clans, correct?

10:43:29 3 A. Yes.

10:43:34 4 Q. And that was done by somebody named Terry Campbell at  
10:43:40 5 GREE, correct?

10:43:41 6 A. Yes.

10:43:41 7 Q. And it was in March of 2015, right?

10:43:43 8 A. It looks like it, yes.

10:43:44 9 Q. And then you forwarded it to a number of people,  
10:43:49 10 including Mr. Araki, correct?

10:43:52 11 A. Yes.

10:43:53 12 Q. Okay. This email is Mr. Campbell's personal  
10:43:56 13 take-aways and notes from a GDC session on Clash of Clans?

10:44:00 14 A. Yes.

10:44:01 15 Q. GDC is game developer's conference, a big conference in  
10:44:08 16 the industry?

10:44:08 17 A. Yes.

10:44:08 18 Q. All right. And he is giving his thoughts and also  
10:44:10 19 reporting on what he heard about Clash of Clans at this  
10:44:14 20 conference, correct?

10:44:14 21 A. Yes.

10:44:18 22 Q. On Page 2, in the third paragraph, he writes that:  
10:44:26 23 Stand-out ideas such as monetization not becoming the  
10:44:30 24 driving purpose of the game's core design but just a factor  
10:44:34 25 of it. Their retention metric was startling, too.

10:44:38 1 Correct?

10:44:39 2 A. Yes, it says that.

10:44:40 3 Q. Do you understand that to mean that making money wasn't  
10:44:45 4 the only point, the part about monetization?

10:44:50 5 A. I would characterize it slightly differently.

10:44:53 6 Q. You want to have a good game first, right?

10:44:56 7 A. Correct.

10:44:56 8 Q. And then their retention metric was startling, too, and  
10:45:01 9 we saw that stat earlier. Startling means it was really  
10:45:06 10 good, right?

10:45:06 11 A. Top.

10:45:07 12 Q. I beg your pardon, sir?

10:45:09 13 A. It was one of the top.

10:45:10 14 Q. One of the top. Thank you.

10:45:15 15 MR. SACKSTEDER: If we go to Page 3, the first  
10:45:19 16 bullet point.

10:45:19 17 Q. (By Mr. Sacksteder) And there's highlighting on the  
10:45:20 18 document. That was in the original document, correct?

10:45:22 19 A. I do not know.

10:45:26 20 Q. Okay. So this is talking about the team focusing on  
10:45:31 21 crafting a solid core loop game experience, correct?

10:45:37 22 A. Sorry, reading. Yes.

10:45:42 23 Q. And even trying to improve and refine the core loop  
10:45:45 24 after release, correct?

10:45:46 25 A. Yes, that was industry practice.



10:45:49 1 Q. All right. And the core loop is sort of the -- the  
10:45:52 2 fundamentals of how the game is played; is that a fair way  
10:45:55 3 to describe it?

10:45:56 4 A. It is the moment-to-moment experience that you do  
10:46:01 5 repeatedly inside the game.

10:46:03 6 Q. There's another bullet point that says: Development  
10:46:13 7 did not move on to the next phase -- that may be a little  
10:46:17 8 farther down -- until the core was most solid and  
10:46:22 9 importantly fun. Correct?

10:46:24 10 A. Yes.

10:46:24 11 Q. There at the top?

10:46:26 12 A. That's right.

10:46:35 13 MR. SACKSTEDER: And on Page 5.

10:46:37 14 Q. (By Mr. Sacksteder) There is a place that's already  
10:46:46 15 highlighted again. Supercell's big win retention metric,  
10:46:51 16 correct?

10:46:51 17 A. Yes, that's what it says.

10:46:53 18 Q. And this is all in 2015, right?

10:46:55 19 A. Sorry, I want to get it right. Yes, 2015.

10:47:05 20 Q. And that's talking about Supercell's Clash of Clans  
10:47:07 21 game, correct?

10:47:08 22 A. Yes, absolutely.

10:47:09 23 Q. And it had to be around for at least two years because  
10:47:12 24 it's looking back at two years of gamer retention, correct?

10:47:15 25 A. Yes, I would conclude that.

10:47:17 1 Q. And then below, it says: Long-term game experience  
10:47:22 2 decisions drive people to come back. Correct?

10:47:24 3 A. Yes.

10:47:26 4 Q. And that means that the overall quality of the game  
10:47:30 5 experience makes people want to keep playing, right?

10:47:33 6 A. Yes.

10:47:35 7 Q. And that's talking about Clash of Clans, correct?

10:47:38 8 A. Yes.

10:47:39 9 Q. In 2015, correct?

10:47:42 10 A. Yes.

10:47:42 11 Q. Thank you, Mr. Sheppard.

10:47:44 12 A. No, problem.

10:47:45 13 MR. SACKSTEDER: Pass the witness.

10:47:46 14 THE COURT: Redirect, Ms. Ludlam?

10:47:48 15 MS. LUDLAM: We have no further questions,  
10:47:50 16 Your Honor.

10:47:50 17 THE COURT: All right. You may step down,  
10:47:52 18 Mr. Sheppard.

10:47:52 19 THE WITNESS: Thank you, Your Honor.

10:47:53 20 MS. LUDLAM: May I ask that Mr. Sheppard be  
10:47:55 21 excused?

10:47:57 22 THE COURT: Any objection?

10:47:58 23 MR. SACKSTEDER: No objection, Your Honor.

10:47:59 24 THE COURT: You're excused, Mr. Sheppard.

10:48:01 25 THE WITNESS: Thank you, Your Honor.

10:48:02 1 THE COURT: That means you're free to stay. It  
10:48:04 2 also means you're free to leave.

10:48:07 3 THE WITNESS: Thank you, sir.

10:48:08 4 THE COURT: Ladies and gentlemen of the jury,  
10:48:09 5 we're going to take this opportunity to have a short  
10:48:12 6 recess.

10:48:12 7 If you will, just close your notebooks and leave  
10:48:14 8 them in your chairs. Follow all the instructions I've  
10:48:18 9 given you, including not to discuss the case among each  
10:48:20 10 other, and we'll be back to continue with the next witness  
10:48:23 11 shortly.

10:48:24 12 The jury is excused for recess.

10:48:26 13 COURT SECURITY OFFICER: All rise.

10:48:26 14 (Recess.)

10:48:30 15 THE COURT: The Court stands in recess.

11:08:37 16 (Jury out.)

11:08:38 17 COURT SECURITY OFFICER: All rise.

11:08:40 18 THE COURT: Be seated, please.

11:08:43 19 Plaintiff, are you prepared to call your next  
11:08:51 20 witness?

11:08:52 21 MR. MOORE: Yes, Your Honor, we are.

11:08:53 22 THE COURT: All right. I understand we have a  
11:08:55 23 series of deposition witnesses.

11:08:56 24 MR. MOORE: We do. And the first two by video,  
11:08:59 25 the third will be the one that we discussed the other day

11:09:02 1 about reading into the record --

11:09:04 2 THE COURT: And I'll make that explanation known  
11:09:06 3 to the jury at that time.

11:09:06 4 MR. MOORE: Thank you, Your Honor.

11:09:07 5 THE COURT: All right. Let's bring in the jury,  
11:09:09 6 please.

11:09:09 7 COURT SECURITY OFFICER: Yes, sir.

11:09:11 8 All rise.

11:09:14 9 (Jury in.)

11:09:14 10 THE COURT: Please be seated.

11:09:38 11 Plaintiff, call your next witness.

11:09:41 12 MR. MOORE: Your Honor, for our next witness, we  
11:09:43 13 will call by deposition Jeff Ostler, Supercell corporate  
11:09:50 14 representative.

11:09:50 15 THE COURT: Proceed with the witness by  
11:09:52 16 deposition.

11:09:53 17 MR. MOORE: Thank you, Your Honor.

11:09:54 18 (Videoclip played.)

11:09:55 19 QUESTION: Good afternoon, Mr. Ostler. As I  
11:09:58 20 mentioned a moment ago, my name is Steve Moore, and I  
11:10:00 21 represent GREE in this case?

11:10:02 22 ANSWER: Yes.

11:10:05 23 QUESTION: All right. Now, you're here testifying  
11:10:07 24 as a corporate representative of Supercell O-y; is that  
11:10:13 25 correct?

11:10:13 1 ANSWER: Yes.

11:10:16 2 QUESTION: And you've worked for Supercell,  
11:10:19 3 Incorporated, since August of 2014; is that right?

11:10:23 4 ANSWER: That's correct.

11:10:24 5 QUESTION: Have you ever reviewed any of the  
11:10:25 6 patents that GREE is asserting in these lawsuits?

11:10:27 7 ANSWER: I don't believe so. I have not read the  
11:10:37 8 specific patents or -- or looked at the patents themselves.

11:10:41 9 QUESTION: Mr. Ostler, have you seen Exhibit 104  
11:10:47 10 previously?

11:10:48 11 ANSWER: I don't recall ever seeing this document.

11:10:50 12 QUESTION: Can you testify as to what Supercell  
11:10:54 13 did in response to receiving this letter?

11:10:57 14 ANSWER: I don't know.

11:11:00 15 QUESTION: You don't know what Supercell did in  
11:11:02 16 response to this letter?

11:11:04 17 ANSWER: I don't know.

11:11:06 18 QUESTION: Do you know whether Supercell, for  
11:11:08 19 example, reviewed any of the patents or patent applications  
11:11:10 20 that are recited in Exhibit 104?

11:11:13 21 ANSWER: I don't know.

11:11:15 22 QUESTION: Ms. Moore, if you could introduce as  
11:11:23 23 the next Exhibit 105, the 5th supplemental responses to  
11:11:29 24 interrogatories, please.

11:11:30 25 This interrogatory, which is on the middle of

11:11:33 1 Page 20, asks for each asserted patent, provide the date  
11:11:36 2 you first became aware of the asserted patent, and all  
11:11:41 3 facts related to your first awareness or knowledge of the  
11:11:45 4 asserted patent, and then it continues.

11:11:47 5 What I want to direct your attention to is that,  
11:11:50 6 in the response, following a number of objections, at the  
11:11:53 7 bottom of Page 21, do you see the indication there that  
11:11:57 8 Supercell believes it first became aware of U.S. Patent  
11:12:03 9 No. 9,597,594 in or around September 2017?

11:12:07 10 ANSWER: I see that.

11:12:10 11 QUESTION: How did Supercell first become aware of  
11:12:15 12 the '594 patent in or around September of 2017?

11:12:19 13 ANSWER: I don't know.

11:12:20 14 QUESTION: Did Supercell do anything between  
11:12:26 15 receipt of the letter that we marked as Exhibit 104 in  
11:12:31 16 September of 2016 and its learning of the '594 patent in  
11:12:38 17 September 2017 to investigate that patent or the patent  
11:12:44 18 application that led to the patent?

11:12:46 19 ANSWER: I am not -- I don't know. I'm not aware  
11:12:50 20 of what might have been done.

11:12:53 21 QUESTION: Has Supercell ever done anything to  
11:13:02 22 monitor or track any patents or patent applications of  
11:13:08 23 GREE's?

11:13:08 24 ANSWER: I don't -- what do you mean by track the  
11:13:11 25 GREE patent?

11:13:12 1 QUESTION: Well, has Supercell ever monitored or  
11:13:18 2 tracked when GREE had patents that are either published or  
11:13:23 3 that are issued by the Patent Office?

11:13:26 4 ANSWER: I am not aware of our practices around --  
11:13:34 5 around that.

11:13:35 6 QUESTION: Exhibit 106 will be the fourth  
11:13:37 7 supplemental objections and responses to interrogatories in  
11:13:42 8 the -- in the 70 case.

11:13:46 9 Do you see that there's -- around the middle or  
11:13:49 10 towards the top of that page, actually, there's the same  
11:13:53 11 interrogatory that we looked at for Exhibit 105 asking  
11:13:57 12 about the date that Supercell first became aware of the  
11:14:00 13 asserted patents?

11:14:01 14 ANSWER: I'm sorry, on Page 36?

11:14:07 15 QUESTION: That's right.

11:14:09 16 ANSWER: Where -- where it asks for the date?  
11:14:12 17 Yes.

11:14:12 18 QUESTION: That's right, the Interrogatory No. 4.  
11:14:15 19 Do you see that?

11:14:16 20 ANSWER: Yes.

11:14:16 21 QUESTION: Okay. And so then if -- if you go to  
11:14:22 22 the next page, Page 37, again, after a number of objections  
11:14:25 23 towards the bottom of the page, do you see that it says:  
11:14:32 24 Supercell believes it first became aware of U.S. Patent  
11:14:39 25 Nos. 9,604,137 and 9,956,481 in or around July of 2018?

11:14:46 1 ANSWER: Yes, I see that -- that sentence.

11:14:51 2 QUESTION: How did Supercell become aware of those  
11:14:54 3 two patents at that time?

11:14:55 4 ANSWER: I do not know that.

11:15:03 5 QUESTION: And who at Supercell became aware of  
11:15:05 6 those two patents then?

11:15:07 7 ANSWER: I can't speak to who became aware of it.

11:15:16 8 QUESTION: And who is Mr. Partanen?

11:15:22 9 ANSWER: I don't know his -- again, titles are  
11:15:27 10 somewhat non-existent, but I believe he's -- he is in  
11:15:33 11 the -- the legal department.

11:15:35 12 QUESTION: Is he an attorney?

11:15:39 13 ANSWER: I -- I believe he was an attorney at --  
11:15:41 14 for Supercell. I'm not sure his official capacity as far  
11:15:46 15 as like what the name -- like what the name would be, but I  
11:15:51 16 assume so.

11:15:52 17 QUESTION: I'd asked Ms. Moore before we broke to  
11:15:58 18 mark as our next Exhibit 107, a copy of GREE's '594 patent.

11:16:04 19 If you could please display that and allow it to  
11:16:07 20 be downloaded, Ms. Moore.

11:16:09 21 Have you ever seen the '594 patent before?

11:16:11 22 ANSWER: Not that I can recall.

11:16:17 23 QUESTION: Do you see on -- if you go back to  
11:16:19 24 Exhibit 104, which is the September 12, 2016 letter. Do  
11:16:25 25 you have that available?



11:16:25 1 ANSWER: Yes, I have that.

11:16:27 2 QUESTION: Great. You see at the bottom of the  
11:16:30 3 first page of that letter that one of the patents listed is  
11:16:32 4 U.S. Patent Application 14/983,984?

11:16:39 5 ANSWER: Yes.

11:16:40 6 QUESTION: And then if you look at the -- the  
11:16:43 7 patent itself that I just marked as Exhibit 107, if you  
11:16:48 8 look about a third of the way down on the left-hand side of  
11:16:53 9 the first page, you see that there's a box there that lists  
11:16:58 10 the number 21 in parentheses?

11:17:01 11 ANSWER: Yes.

11:17:01 12 QUESTION: And that says: Application No.  
11:17:07 13 14/983,984. Do you see that?

11:17:09 14 ANSWER: I see that, yes.

11:17:10 15 QUESTION: Does looking at these materials refresh  
11:17:14 16 your recollection as to whether Supercell, after receiving  
11:17:18 17 the letter of September of 2016, reviewed the patent  
11:17:25 18 application that had been mentioned in the letter?

11:17:30 19 ANSWER: I am not aware of the patent being  
11:17:32 20 reviewed.

11:17:39 21 QUESTION: You just don't know whether it was or  
11:17:41 22 not?

11:17:41 23 ANSWER: Correct.

11:17:41 24 QUESTION: Has Supercell been profitable as a  
11:17:46 25 company?

11:17:46 1 ANSWER: Yes, the company has been profitable.

11:17:48 2 QUESTION: And how long -- for how long has that  
11:17:50 3 been true?

11:17:51 4 ANSWER: I started in August 2014. We've been  
11:17:57 5 profitable during my tenure, at least on an annual basis.  
11:18:01 6 And I believe we were profitable in 2013. I can't recall  
11:18:12 7 2012, but if there's a document I can review, I'd be happy  
11:18:15 8 to say so.

11:18:16 9 QUESTION: Is the U.S. one of the larger markets  
11:18:20 10 for Supercell's worldwide revenues?

11:18:23 11 ANSWER: Yes.

11:18:23 12 QUESTION: Is it the largest market?

11:18:30 13 ANSWER: When you say the largest market, are you  
11:18:32 14 referring to our revenue in the U.S. is higher than other  
11:18:37 15 countries?

11:18:39 16 QUESTION: Yes. As a single country, is U.S. the  
11:18:43 17 largest market for Supercell's revenues?

11:18:45 18 ANSWER: Yes, it is currently the largest -- the  
11:18:47 19 country with the most revenue.

11:18:49 20 QUESTION: How long has that been the case that  
11:18:51 21 the U.S. has been the largest revenue-producing country for  
11:18:56 22 Supercell's games?

11:18:57 23 ANSWER: I'd have to review documents, but I  
11:18:59 24 believe at least since I've been working with Supercell, at  
11:19:07 25 least since August of 2014.

11:19:10 1 QUESTION: Let's mark -- this is a document  
11:19:12 2 produced previously as Bates No. Supercell GR00003143  
11:19:18 3 through 3144, and let's mark it as our next exhibit, which  
11:19:24 4 I believe is Exhibit 113.

11:19:26 5 Do you see that this is a declaration from  
11:19:31 6 Mr. Hannu Partanen, who we -- whom we discussed before?

11:19:34 7 ANSWER: Yes.

11:19:35 8 QUESTION: And it's a declaration he made to the  
11:19:38 9 Tokyo District Court. Do you see that?

11:19:41 10 ANSWER: I do.

11:19:43 11 QUESTION: You're welcome to look through the --  
11:19:46 12 the document, but I would direct your attention to the  
11:19:53 13 second page, which is Bates No. 3144.

11:20:00 14 Do you see that Paragraph 10 states: Supercell  
11:20:07 15 utilizes Amazon's web service cloud AWS servers?

11:20:13 16 ANSWER: Yes.

11:20:14 17 QUESTION: Mr. Partanen also told the Court in  
11:20:17 18 Tokyo that Supercell's AWS accounts are owned and in the  
11:20:24 19 name of Supercell Oy. Do you see that?

11:20:26 20 ANSWER: I do.

11:20:27 21 QUESTION: And as far as you know, is that  
11:20:29 22 statement he made to the Court accurate?

11:20:33 23 ANSWER: That's my understanding, yes.

11:20:34 24 QUESTION: And then the next Paragraph No. 12  
11:20:40 25 states: Each server owned in the name of Supercell Oy is

11:20:44 1 located in the United States and Europe.

11:20:46 2 And then it says: Amazon AWS East and West plus  
11:20:52 3 Frankfurt.

11:20:53 4 Do you see that?

11:20:54 5 ANSWER: Yes.

11:20:54 6 QUESTION: As far as you're aware, is that an  
11:20:56 7 accurate statement that Mr. Partanen made to the Court, as  
11:21:00 8 well?

11:21:00 9 ANSWER: As far as I know, that was the case at  
11:21:03 10 that time, yes.

11:21:03 11 QUESTION: Okay. And is there any difference  
11:21:05 12 between that time and today in terms of the servers that  
11:21:09 13 Supercell uses for its games?

11:21:12 14 ANSWER: I am aware that Amazon has other  
11:21:15 15 instances globally and that we had considered using those  
11:21:22 16 at times. So I can't speak to the current location of all  
11:21:27 17 servers, though.

11:21:31 18 QUESTION: Well, for the U.S. market, do you have  
11:21:34 19 any understanding of where the servers that Supercell uses  
11:21:38 20 for players in that market are located?

11:21:41 21 ANSWER: My understanding is that they are in  
11:21:44 22 Oregon and Virginia.

11:21:45 23 QUESTION: And, again, those are servers that  
11:21:50 24 Super has -- cell has through its AWS accounts; is that  
11:21:57 25 correct?

11:21:57 1 ANSWER: That's my understanding.

11:22:03 2 QUESTION: In other words, the -- the response on  
11:22:05 3 Page 21, you discussed with our -- Mr. Partanen that  
11:22:11 4 Supercell first became aware of U.S. Patent No. 9,597,594  
11:22:16 5 in or around September 2017?

11:22:20 6 ANSWER: Yes, that's correct.

11:22:22 7 QUESTION: Did you learn anything else about what  
11:22:25 8 Supercell did after receiving Exhibit 104 from your  
11:22:30 9 conversations with Mr. Partanen?

11:22:34 10 ANSWER: Just that it was provided to external  
11:22:36 11 counsel.

11:22:38 12 QUESTION: Going back to the topic of Supercell's  
11:22:40 13 knowledge of any interrogatory responses, I've asked  
11:22:46 14 Ms. Moore to load Exhibit 106 from yesterday's deposition,  
11:22:49 15 which I think is available for you to download it if you  
11:22:53 16 would like to do so. I would ask you to turn to Page --  
11:23:07 17 I'd ask you to turn to Page 36 and 37.

11:23:10 18 Did you and Mr. Partanen discuss anything about  
11:23:16 19 the response that is found on Page 36 and 37 of  
11:23:20 20 Exhibit 106?

11:23:21 21 ANSWER: We discussed that, indeed, this is when  
11:23:27 22 we believe we first became aware of the patents in question  
11:23:30 23 on Page 37.

11:23:33 24 QUESTION: And do you know who at Supercell became  
11:23:40 25 aware or how they became aware of those patents?

11:23:44 1 ANSWER: The legal department learned of -- or  
11:23:47 2 became aware of the existence and nothing else  
11:23:51 3 non-privileged.

11:23:59 4 (Videoclip ends.)

11:24:00 5 THE COURT: Does that complete this witness by  
11:24:03 6 deposition?

11:24:03 7 MR. MOORE: It does. Thank you, Your Honor.

11:24:05 8 I neglected to read in the Plaintiff's trial  
11:24:08 9 exhibits for this deposition. May I do so now?

11:24:11 10 THE COURT: Quickly.

11:24:12 11 MR. MOORE: Thank you. That deposition used  
11:24:14 12 Plaintiff's Trial Exhibits 5, 105, 106, 107, and 111.

11:24:21 13 Thank you, Your Honor.

11:24:22 14 THE COURT: Call your next witness.

11:24:23 15 MR. MOORE: Your Honor, for its next witness GREE  
11:24:28 16 calls by deposition Supercell's corporate representative,  
11:24:34 17 Stuart McGaw, by dep --

11:24:36 18 THE COURT: Please proceed.

11:24:37 19 (Videoclip played.)

11:24:38 20 QUESTION: Could you just please state your name  
11:24:41 21 and spell it for the record, please?

11:24:42 22 ANSWER: My name is Stuart McGaw. First name is  
11:24:45 23 S-t-u-a-r-t, and the surname is M-c-G-a-w.

11:24:54 24 QUESTION: So let's start with some real basics  
11:24:57 25 here. You joined Supercell in April 2017, correct?

11:25:01 1 ANSWER: Yes.

11:25:01 2 QUESTION: And since then, you've worked primarily  
11:25:04 3 on Clash of Clans, correct?

11:25:10 4 ANSWER: Yes.

11:25:10 5 QUESTION: Now, you also mentioned the technical  
11:25:14 6 architecture. Could you give me an overview of the  
11:25:17 7 technical architecture of Hay Day?

11:25:19 8 ANSWER: Yeah. It's a server -- a client server  
11:25:24 9 game that uses lockstep simulation, so that the -- the  
11:25:32 10 server has a definitive version of the world and the client  
11:25:39 11 has a similar version and can execute commands that are  
11:25:44 12 sent to the server, which checks the user allowed in the  
11:25:49 13 space. And, you know, the -- the -- as -- as they keep  
11:25:52 14 executing the commands, they stay synchronized.

11:25:55 15 QUESTION: I see. So the same code is running on  
11:25:57 16 the server as on the client or something very similar?

11:26:02 17 ANSWER: There's some code that isn't -- that is  
11:26:06 18 run in common. So both the server and client, of course,  
11:26:10 19 have some unique code. But there's a form of code that is  
11:26:16 20 written originally in C++ and then converted into Java,  
11:26:20 21 which is running the server that the code is written on  
11:26:24 22 manually.

11:26:24 23 QUESTION: Could you give me an architectural  
11:26:27 24 overview of the way the code functions in Clash of Clans?

11:26:30 25 ANSWER: It would be very broadly similar to what

11:26:32 1 we discussed for Hay Day.

11:26:35 2 QUESTION: Okay. Give me -- we already have your  
11:26:38 3 description of how it works for Hay Day. Could you just  
11:26:41 4 highlight any differences in terms of how the architecture  
11:26:44 5 works in Clash of Clans from Hay Day?

11:26:46 6 ANSWER: What are the key differences? I think  
11:26:52 7 the classifiers for the in-game objects aren't as -- not  
11:26:58 8 quite as complicated. There's not quite so many different  
11:27:01 9 kinds of them.

11:27:02 10 And in Clash, we use what is called like a  
11:27:06 11 component system so that similar facets of behavior could  
11:27:14 12 be shared across different kinds of objects with that help  
11:27:20 13 applicator, so that there's not quite as much duplicated of  
11:27:26 14 the core codes in those class hierarchies, which makes some  
11:27:29 15 things easier to -- easier to do.

11:27:32 16 QUESTION: Could you give me just a general  
11:27:36 17 overview of the code structure in Clash of Clans? And,  
11:27:44 18 again, to the extent it's similar to Hay Day, you can  
11:27:46 19 simply say similar to Hay Day. But to the extent it's  
11:27:49 20 different, I -- if you could just describe those  
11:27:51 21 differences.

11:27:52 22 ANSWER: Yeah, broadly, it's very, very similar to  
11:27:55 23 Hay Day. You know, there's the same -- you know, there's  
11:27:58 24 client on the code, server on the code, and then there's  
11:28:01 25 this act that kind of happens on both that goes through the



11:28:06 1 code conversion. But, you know, it's still under the same  
11:28:06 2 client logic directory that we discussed earlier so they  
11:28:11 3 are -- they are quite similar.

11:28:11 4 QUESTION: So could you describe the differences  
11:28:13 5 since I understand there are a lot of similarities. What  
11:28:16 6 are the differences?

11:28:17 7 ANSWER: I think that the -- the biggest one for  
11:28:21 8 me when I came was that the component-based --  
11:28:26 9 component-based system that was kind of something that Hay  
11:28:29 10 Day didn't have.

11:28:30 11 (Videoclip ends.)

11:28:34 12 THE COURT: Does that complete this witness?

11:28:36 13 MR. MOORE: It does, Your Honor.

11:28:37 14 THE COURT: Proceed with your next witness.

11:28:38 15 MR. MOORE: Thank you, Your Honor.

11:28:39 16 For its next witness, Plaintiff, GREE, will call  
11:28:42 17 Rene Kivioja, corporate representative of Supercell, and,  
11:28:46 18 Your Honor, this is the one where we do not have the video.

11:28:48 19 THE COURT: All right. Ladies and gentlemen of  
11:28:49 20 the jury, this is a witness by deposition where when the  
11:28:54 21 deposition was taken, there was not a video recording made.  
11:28:57 22 The questions were asked, the answers were given, it was  
11:29:00 23 under oath, and everything was transcribed and written  
11:29:03 24 down. That's what we have.

11:29:04 25 So, in this case, counsel for Plaintiff will ask

11:29:08 1 questions, and a person impersonating the witness will read  
11:29:12 2 the answers from the witness stand.

11:29:15 3 So the person that you're going to see is not the  
11:29:18 4 person whose deposition was taken. It's someone who will  
11:29:23 5 be reading those sworn answers to you.

11:29:24 6 All right. Let's proceed with the witness by  
11:29:26 7 deposition.

11:29:26 8 MR. MOORE: Thank you, Your Honor. And my  
11:29:29 9 co-counsel, Ms. Taylor Pfingst will do the questioning and  
11:29:34 10 my co-counsel Ms. Kasey Koballa will read the answers. If  
11:29:37 11 they may approach.

11:29:37 12 THE COURT: That's fine. If you ladies will take  
11:29:39 13 your positions, please, one at the podium and one on the  
11:29:42 14 witness stand.

11:29:43 15 MR. MOORE: Thank you, Your Honor.

11:29:43 16 THE COURT: And, again, Mr. Moore, tell us who  
11:29:45 17 this witness is.

11:29:46 18 MR. MOORE: Thank you, Your Honor. It is Rene  
11:29:49 19 Kivioja, K-i-v-i-o-j-a, corporate representative of  
11:29:52 20 Supercell.

11:29:52 21 THE COURT: All right. Proceed with the  
11:29:54 22 deposition, please.

11:29:57 23 MS. PFINGST: Thank you, Your Honor.

11:29:58 24 (Deposition transcript read by Counsel.)

11:29:58 25 QUESTION: Could I have you state your name one

11:30:02 1 more time for the record, please, Mr. Kivioja?

11:30:04 2 ANSWER: Rene Kivioja.

11:30:05 3 QUESTION: Do you understand that today you are  
11:30:06 4 testifying on behalf of the company, Supercell, as a  
11:30:10 5 corporate witness?

11:30:11 6 ANSWER: Yes, I understand.

11:30:12 7 QUESTION: Supercell makes games that are played  
11:30:14 8 on both iOS and Android operating systems; is that correct?

11:30:17 9 ANSWER: Yes, it's correct.

11:30:20 10 QUESTION: Do those iOS and Android games have the  
11:30:23 11 same code-based interface?

11:30:25 12 ANSWER: Yes, difference is like minimal.

11:30:30 13 QUESTION: You can't remember any differences  
11:30:31 14 between the Android and the iOS version of Supercell's  
11:30:34 15 games?

11:30:34 16 ANSWER: No, I'm not aware of any differences.

11:30:38 17 QUESTION: This copy layout function allows to  
11:30:42 18 copy the layout of other clan members; is that correct?

11:30:47 19 ANSWER: Like I said, it could copy the layout by  
11:30:49 20 clan members.

11:30:50 21 QUESTION: Why did Supercell add this feature to  
11:30:54 22 Clash of Clans?

11:30:54 23 ANSWER: It's one of those so-called quality of  
11:30:57 24 life things that players would be -- it would be more fun  
11:31:00 25 to play the game.

11:31:01 1 QUESTION: Would it be possible to implement a  
11:31:05 2 feature in Clash of Clans that would allow users to share  
11:31:09 3 base layouts with other users by creating a shareable link  
11:31:11 4 to their base and posting the link on social media?

11:31:13 5 ANSWER: It's possible to create that kind of  
11:31:15 6 link.

11:31:15 7 QUESTION: And how would you implement that?

11:31:17 8 ANSWER: I mean, it's in the game, no need to  
11:31:21 9 implement it.

11:31:22 10 QUESTION: Did you say it's in the game, is that  
11:31:24 11 what your answer was?

11:31:26 12 ANSWER: Yes.

11:31:26 13 QUESTION: If so, what is the functionality of the  
11:31:29 14 game as a user to share -- how does a user create a  
11:31:35 15 shareable link to their layout?

11:31:36 16 ANSWER: I've never done it myself, that kind of  
11:31:38 17 feature.

11:31:38 18 QUESTION: When was that feature added?

11:31:40 19 ANSWER: It was quite recent.

11:31:41 20 QUESTION: How recent?

11:31:42 21 ANSWER: That's what I'm trying to remember.

11:31:45 22 QUESTION: So somebody publishes a link to their  
11:31:47 23 layout, anyone can copy that link?

11:31:51 24 ANSWER: Not any copy. I mean, you have to have,  
11:31:53 25 like, a same kind of -- could be a certain -- I don't think

11:31:57 1 you can do it, you don't even have all the buildings.

11:32:02 2 MS. PFINGST: Thank you, Your Honor. That  
11:32:03 3 completes Mr. Kivioja.

11:32:05 4 THE COURT: All right. Thank you.

11:32:06 5 Call your next witness, Plaintiff.

11:32:09 6 MR. MOORE: Thank you, Your Honor.

11:32:10 7 For its next witness, Plaintiff, GREE, calls by  
11:32:14 8 deposition Supercell corporate representative Janne  
11:32:22 9 Peltola.

11:32:22 10 THE COURT: Proceed with this witness by  
11:32:24 11 deposition.

11:32:25 12 MR. MOORE: Thank you.

11:32:26 13 (Videoclip played.)

11:32:27 14 QUESTION: Mr. Peltola, could you please state  
11:32:31 15 your name and spell it for the record?

11:32:33 16 ANSWER: My name is Janne Peltola, J-a-n-n-e,  
11:32:36 17 P-e-l-t-o-l-a.

11:32:37 18 QUESTION: So are you aware that you have been  
11:32:39 19 designated as a representative -- as a corporate  
11:32:41 20 representative of Supercell to testify today on behalf of  
11:32:51 21 Supercell?

11:32:51 22 ANSWER: Yes.

11:32:52 23 QUESTION: And you understand that your testimony  
11:32:53 24 will bind Supercell, correct?

11:32:54 25 ANSWER: Yes.

11:32:58 1 QUESTION: And what were your -- did you have a  
11:33:00 2 title within the marketing team?

11:33:01 3 ANSWER: Data scientist.

11:33:03 4 QUESTION: So that has not changed throughout your  
11:33:08 5 time at Supercell?

11:33:09 6 ANSWER: No.

11:33:09 7 QUESTION: What is -- what is grinding?

11:33:11 8 ANSWER: Grinding is gamer slang for -- for a  
11:33:17 9 repetitive action that's done over and over again.

11:33:20 10 QUESTION: And I think I've seen some  
11:33:23 11 communication or correspondence about that grinding is not  
11:33:27 12 something that Supercell likes?

11:33:29 13 ANSWER: Grinding goes against the idea of a  
11:33:32 14 meaningful game experience. We want our games to feel  
11:33:36 15 fresh and fun to play. Doing the same thing over and over  
11:33:39 16 again is, by definition, usually not fun.

11:33:41 17 QUESTION: Going back to the social interactions.  
11:33:46 18 We talked about Clash of Clans. And then we started to  
11:33:49 19 talk about Brawl Stars, but you said maybe there aren't any  
11:33:53 20 social -- are there social interactions that make the game  
11:33:56 21 more meaningful within Brawl Stars?

11:33:58 22 ANSWER: The game itself is social. One of the  
11:34:00 23 key drivers of engagement in Brawl, we found from user  
11:34:05 24 studies, is the act of playing together with friends,  
11:34:09 25 because you can play on the same team and you can be

11:34:12 1 physically in the same room with people. And you know that  
11:34:16 2 there are other people on the other side of the phone.

11:34:19 3 QUESTION: So, again, it -- while obvious -- the  
11:34:22 4 social -- you said revenue obviously is important, but it's  
11:34:25 5 just one element, and there are other elements that are  
11:34:28 6 important, including social interactions. Any others?

11:34:33 7 ANSWER: Engagement with the game in general. I'm  
11:34:38 8 that's -- that's the primary metric.

11:34:39 9 QUESTION: How do you measure engagement? What  
11:34:42 10 KPIs go into that?

11:34:43 11 ANSWER: It's usually a combination of retention  
11:34:45 12 and playtime, but you can also use following-day retention.

11:34:54 13 THE REPORTER: You can also use?

11:34:55 14 ANSWER: Following-day retention.

11:34:57 15 QUESTION: And that's true for all of the games?

11:35:02 16 ANSWER: Yes.

11:35:03 17 QUESTION: Does Supercell track how many players  
11:35:06 18 are paying players versus non-paying players in any one  
11:35:09 19 game?

11:35:10 20 ANSWER: Yes.

11:35:10 21 QUESTION: Do you have a rough idea about overall  
11:35:13 22 how many players are paying players versus non-paying  
11:35:18 23 players?

11:35:18 24 ANSWER: I could query that, but I don't have that  
11:35:21 25 number for you.

11:35:21 1 QUESTION: Do you have a guess?

11:35:24 2 ANSWER: No.

11:35:26 3 QUESTION: So you don't see that data on a regular  
11:35:29 4 basis?

11:35:30 5 ANSWER: I do. I just -- I won't -- I won't start  
11:35:34 6 guessing right now.

11:35:37 7 QUESTION: Well, so I understand that you're  
11:35:40 8 uncomfortable by giving something that might not be  
11:35:44 9 precise. But I -- I would like to know what you think it  
11:35:47 10 might be, even if it's not exactly correct.

11:35:51 11 ANSWER: I would say that we are talking in the  
11:35:56 12 ballpark of 5 to 10 percent.

11:35:57 13 QUESTION: 5 to 10 percent are paying?

11:36:02 14 ANSWER: Paying.

11:36:02 15 QUESTION: When we talk about -- you said that  
11:36:07 16 Supercell does like to drive -- encourage non-paying  
11:36:10 17 players to become paying players and does offer different  
11:36:14 18 conversion offers. Are there other players that Supercell  
11:36:17 19 deems valuable outside of just the metric of paying versus  
11:36:21 20 non-paying?

11:36:22 21 ANSWER: We like engaged users in general.

11:36:25 22 QUESTION: And what -- when you say you like  
11:36:28 23 engaged users, how can a user express their engagement?

11:36:32 24 ANSWER: By playing more or at a higher level.

11:36:36 25 QUESTION: Have you ever removed features because



11:36:40 1 they -- because your tracking reflected they weren't

11:36:47 2 helping -- it wasn't helping game play?

11:36:50 3 ANSWER: It's quite rare for us to remove  
11:36:53 4 features. It's -- we're more likely to refine them.

11:36:56 5 QUESTION: Okay. Change them to improve game  
11:37:00 6 play?

11:37:00 7 ANSWER: Yes.

11:37:01 8 QUESTION: Why is it rare that you remove  
11:37:05 9 features?

11:37:05 10 ANSWER: There's typically a good reason why we  
11:37:08 11 make those features in the first place. And it's -- I  
11:37:11 12 don't think I remember a single time we've implemented a  
11:37:14 13 feature that's been a complete bust. There's always  
11:37:17 14 something to save. And the developer has usually spent  
11:37:21 15 months working on the feature. So we try to -- we try to  
11:37:24 16 salvage what we can from that rather than throw it away.

11:37:27 17 QUESTION: Do you recall any instance where a  
11:37:30 18 feature was removed from one of the games?

11:37:32 19 ANSWER: I can't really think of one outside of  
11:37:35 20 the Brawl beta.

11:37:37 21 QUESTION: When Brawl Stars was in beta testing?

11:37:44 22 ANSWER: Yes.

11:37:44 23 QUESTION: What feature was that that was removed?

11:37:46 24 ANSWER: So we -- we completely revamped our  
11:37:51 25 control structure, and we also -- also rebuilt that game

11:37:55 1 economy three times during the beta.

11:37:59 2 QUESTION: Do you see right here where it starts  
11:38:01 3 this second paragraph, where Peltola explains Supercell's  
11:38:07 4 approach to game development in the middle of that  
11:38:09 5 paragraph? Do you see that?

11:38:11 6 ANSWER: Yes.

11:38:12 7 QUESTION: Okay. And it says: We focus on  
11:38:15 8 creating games that are fun and engaging and will retain  
11:38:18 9 players over a long period of time. If we succeed in  
11:38:21 10 making a great game experience, everything else, including  
11:38:24 11 the money, will follow.

11:38:26 12 Is this consistent with what you've stated before,  
11:38:33 13 that the -- is the goal and the focus to create games that  
11:38:36 14 will encourage engagement from players?

11:38:41 15 Okay. So we just talked about the number one  
11:38:45 16 goal, or first goal, with games is to make it fun and  
11:38:51 17 engaging; is that correct?

11:38:52 18 ANSWER: That is true.

11:38:53 19 QUESTION: And that another primary goal of games  
11:38:56 20 is -- is retention, correct?

11:38:57 21 ANSWER: Yes.

11:39:04 22 QUESTION: And that necessarily revenue is not  
11:39:07 23 necessarily the most important point for a game, correct?

11:39:10 24 ANSWER: A game needs to make sense with the  
11:39:17 25 business, but we don't have a business unless the game

11:39:20 1 itself is fun.

11:39:21 2 QUESTION: I understand. Okay. So that's the  
11:39:25 3 maximum level reached during that session. Is there any  
11:39:25 4 connection or corollary between the maximum level reached  
11:39:37 5 and revenue?

11:39:37 6 ANSWER: Are you asking me if that's the  
11:39:39 7 correlation between level and revenue?

11:39:41 8 QUESTION: Or even any of the analytics that  
11:39:44 9 you've run with respect to Brawl Stars, have you ever found  
11:39:48 10 that there's a correlation between max level reached and  
11:39:51 11 revenue?

11:39:52 12 ANSWER: I would say there's a correlation, yes.

11:39:54 13 QUESTION: And do you find that the higher the  
11:39:57 14 level, the greater the revenue?

11:39:58 15 ANSWER: These players have typically spent more  
11:40:02 16 time on the game, so that's -- that's a large factor in  
11:40:06 17 spending more money, as well.

11:40:09 18 QUESTION: So session time during the game can  
11:40:11 19 also -- also relates to revenue?

11:40:14 20 ANSWER: That's true.

11:40:17 21 QUESTION: So I understand that grinding is a  
11:40:20 22 process by which players do take -- repetitive action over  
11:40:25 23 and over and over again?

11:40:27 24 ANSWER: That is true.

11:40:29 25 QUESTION: Okay. And is grinding -- does grinding

11:40:33 1 help player experience, or does it improve player  
11:40:37 2 experience in the game?

11:40:39 3 ANSWER: Grinding is generally considered  
11:40:41 4 detrimental to a player experience.

11:40:45 5 QUESTION: So all that time they spend in the game  
11:40:49 6 is considered detrimental?

11:40:51 7 ANSWER: Not all of it, but the -- I mean,  
11:40:54 8 grinding isn't a black-and-white issue. Some people  
11:40:58 9 consider certain things more granular than other, but,  
11:41:04 10 generally, grinding has a negative connotation.

11:41:07 11 (Videoclip ends.)

11:41:11 12 THE COURT: Does that complete this witness by  
11:41:13 13 deposition?

11:41:14 14 MR. MOORE: Yes, Your Honor.

11:41:15 15 THE COURT: Call your next witness.

11:41:16 16 MR. MOORE: Your Honor, for its next witness, the  
11:41:20 17 Plaintiff, GREE, calls Lauri Ahlgren, Supercell corporate  
11:41:23 18 representative. And if I may note an exhibit in the -- in  
11:41:26 19 the --

11:41:27 20 THE COURT: This is by deposition, as well?

11:41:28 21 MR. MOORE: Yes, I'm sorry, by deposition as well.  
11:41:30 22 May I note the exhibit, Your Honor?

11:41:32 23 THE COURT: You may.

11:41:33 24 MR. MOORE: Thank you. The document used with  
11:41:36 25 Mr. Ahlgren is Plaintiff's Trial Exhibit 61.

11:41:40 1 THE COURT: All right. Proceed with this witness  
11:41:41 2 by deposition.

11:41:42 3 MR. MOORE: Thank you.

11:41:43 4 (Videoclip played.)

11:41:44 5 QUESTION: Would you please state your name for  
11:41:46 6 the record, please?

11:41:47 7 ANSWER: So my name is Lauri Ahlgren.

11:41:49 8 QUESTION: And where do you live?

11:41:50 9 ANSWER: I live in Helsinki, Finland.

11:41:52 10 QUESTION: And you work for Supercell, correct?

11:41:55 11 ANSWER: Yes.

11:41:57 12 QUESTION: And what is your current role at  
11:42:00 13 Supercell?

11:42:00 14 ANSWER: My current role at Supercell is game lead  
11:42:03 15 of Clash Royale.

11:42:05 16 QUESTION: But being able to upgrade your cards is  
11:42:08 17 a feature that Supercell users enjoy; is that correct?

11:42:13 18 ANSWER: Yeah. I think so, yeah.

11:42:17 19 QUESTION: And what is your opinion on that based  
11:42:20 20 on?

11:42:21 21 ANSWER: I think at some point, we have done some  
11:42:28 22 researches about it, then just kind of like -- like, you  
11:42:33 23 know, my own experience as a player, my teammate's  
11:42:40 24 experience as a player. And the upgrading, like I  
11:42:43 25 mentioned earlier, is like a -- it's a really important

11:42:46 1 part of the core of gameplay or game.

11:42:52 2 QUESTION: What research have you done on these  
11:42:54 3 features?

11:42:54 4 ANSWER: We probably -- not -- not sort of like  
11:43:02 5 concentrating at all on these features. I think we haven't  
11:43:06 6 done -- done anything but more like -- sort of like weekly  
11:43:10 7 asking our players what are the things that they like, you  
11:43:16 8 know, in our game and what are the things that they don't  
11:43:18 9 like in our game. And remembering that there's, like, so  
11:43:22 10 different players.

11:43:23 11 So we just can't -- we don't -- don't use the  
11:43:26 12 research, as such, to make any -- any decisions. But we --  
11:43:32 13 we have probably asked -- asked more like questions about  
11:43:38 14 what people -- people actually like -- like in the game.

11:43:41 15 QUESTION: Do you think players would be upset if  
11:43:42 16 you removed the core gameplay of being able to upgrade a  
11:43:46 17 card?

11:43:48 18 ANSWER: The card upgrading, like, completely,  
11:43:53 19 yeah, that would be a big change at least.

11:43:57 20 QUESTION: And do you recall your testimony that  
11:43:59 21 upgrading cards is something that you would consider part  
11:44:01 22 of the core gameplay at Clash Royale?

11:44:04 23 ANSWER: Yes.

11:44:06 24 QUESTION: And do you recall testifying to the  
11:44:08 25 fact that you believed that Clash Royale players enjoy the

11:44:14 1 ability to upgrade cards?

11:44:16 2 ANSWER: Yes, that's one of the -- one of the  
11:44:19 3 things that players enjoy playing the game.

11:44:23 4 QUESTION: Looking at Exhibit 57, is this another  
11:44:27 5 survey that was done about Clash Royale features? And I'm  
11:44:31 6 going to direct -- I'm going to direct you to the Western  
11:44:37 7 Regions tab, which is displayed?

11:44:39 8 ANSWER: I haven't seen this before, so I don't  
11:44:47 9 know.

11:44:47 10 QUESTION: Okay. Are you aware of Supercell using  
11:44:49 11 cross-game surveys?

11:44:53 12 ANSWER: At least -- at least internally, yeah,  
11:45:02 13 this is the first time I see this kind of survey actually  
11:45:06 14 myself.

11:45:07 15 QUESTION: And can you tell me the total number  
11:45:10 16 of -- the percentage of respondents who said that upgraded  
11:45:19 17 cards can make more progress is an experience that is most  
11:45:24 18 central to his or her -- his or her enjoyment of Clash  
11:45:27 19 Royale?

11:45:27 20 ANSWER: So what's the percentage or --

11:45:31 21 QUESTION: What's the percentage of users who  
11:45:35 22 responded that way?

11:45:36 23 ANSWER: It says 58 percent. 58, yes, that's what  
11:45:39 24 it says, according to this survey.

11:45:43 25 QUESTION: So you think this survey supports your

11:45:48 1 opinion earlier that Clash Royale users do think that the  
11:45:54 2 ability to upgrade cards is an important feature or  
11:45:58 3 experience?

11:45:58 4 ANSWER: Yes, I think it is an important aspect of  
11:46:09 5 the game.

11:46:11 6 (Videoclip ends.)

11:46:11 7 THE COURT: Does that complete this witness by  
11:46:13 8 deposition, counsel?

11:46:14 9 MS. LUDLAM: Yes, Your Honor, it does.

11:46:16 10 THE COURT: All right. Plaintiff, call your next  
11:46:18 11 witness.

11:46:19 12 MS. LUDLAM: Plaintiff would like to call  
11:46:22 13 Dr. Stephen Becker.

11:46:23 14 THE COURT: All right. Dr. Becker, if you'll come  
11:46:25 15 forward and be sworn.

11:46:36 16 (Witness sworn.)

11:46:45 17 THE COURT: Please come around and have a seat on  
11:46:47 18 the witness stand, Dr. Becker.

11:46:56 19 Do we have binders to deliver, counsel?

11:46:58 20 MS. LUDLAM: Yes, sir, Your Honor. May we  
11:46:59 21 approach the witness?

11:47:00 22 THE COURT: You may approach.

11:47:16 23 All right. Ms. Ludlam, you may proceed.

11:47:20 24 MS. LUDLAM: Thank you, Your Honor.

11:47:20 25 STEPHEN L. BECKER, PH.D., PLAINTIFF'S WITNESS, SWORN



DIRECT EXAMINATION

11:47:20 1

11:47:21 2

BY MS. LUDLAM:

11:47:21 3

Q. Good morning, Dr. Becker.

11:47:24 4

A. Good morning.

11:47:25 5

Q. Could you please introduce yourself to the jury?

11:47:27 6

A. Yes, my name is Stephen Becker.

11:47:31 7

Q. And what is your role in this proceeding today?

11:47:33 8

A. I'm here as GREE's damages expert.

11:47:37 9

Q. And have you prepared some slides to accompany your

11:47:45 10

testimony today?

11:47:46 11

A. I have.

11:47:47 12

MS. LUDLAM: I believe I've left the clicker

11:47:50 13

behind, so if you'll excuse me a moment.

11:47:54 14

Q. (By Ms. Ludlam) Where are you currently employed,

11:47:56 15

Dr. Becker?

11:47:56 16

A. I work in Austin at a firm called Applied Economics

11:48:02 17

Consulting Group. It's a firm that I founded with my

11:48:04 18

current business partner, Jon Kemmerer.

11:48:06 19

Q. And what is Applied Economics?

11:48:09 20

A. Applied Economics is a firm that -- we do economic and

11:48:12 21

financial consulting in a variety of industries.

11:48:15 22

Most of what we do, depending on -- you know,

11:48:19 23

doesn't really matter what industry it is, is valuing

11:48:24 24

things. We do a lot of work valuing intellectual property

11:48:27 25

assets. We do valuations of entire companies. I do

11:48:32 1 valuations of oil and gas assets, but it's all sort of  
11:48:35 2 related to the economic value of things.

11:48:37 3 Q. And about how long have you been doing this kind of  
11:48:39 4 work?

11:48:40 5 A. So I've been doing this -- the valuation work in  
11:48:44 6 general for probably close to 40 years and at Applied  
11:48:49 7 Economics for 21 years.

11:48:50 8 Q. Dr. Becker, can you please tell us a little bit about  
11:48:53 9 your educational background?

11:48:53 10 A. Sure. I started out first in life as an engineer. I  
11:48:59 11 got a degree in computer science and electrical engineering  
11:49:02 12 from the University of Pennsylvania.

11:49:05 13 I then, after working for a while, went back to  
11:49:07 14 school and got an MBA at the University of Texas at Austin  
11:49:12 15 in finance.

11:49:13 16 And then went and worked for a while again, and  
11:49:16 17 then came back to Austin and got a Ph.D. at the LBJ School  
11:49:22 18 of Public Policy.

11:49:24 19 Q. And can you please tell us about your work history?

11:49:27 20 A. Yes. I started out professionally as a system engineer  
11:49:32 21 and a software and systems designer. I first worked for  
11:49:36 22 Schlumberger, which is an oilfield services company.

11:49:39 23 I left them fairly quickly to go with a small  
11:49:42 24 company called The Solutions Group that was designing  
11:49:45 25 computer systems and software.

11:49:47 1 After graduate school and really ever since  
11:49:50 2 graduate school, I've worked in the consulting field, first  
11:49:53 3 at a large international firm called Booz-Allen & Hamilton;  
11:50:00 4 and then since Booz-Allen, at my own firm, first Becker &  
11:50:06 5 Associates, and for the last 21 years, at Applied  
11:50:09 6 Economics.

11:50:09 7 Q. And have you ever worked on a patent infringement case  
11:50:12 8 as an expert?

11:50:13 9 A. I have. I've been retained as a damages expert in  
11:50:16 10 probably over 200 patent cases.

11:50:19 11 Q. And have you -- how many times you have provided  
11:50:21 12 testimony at trial in a patent infringement case on  
11:50:25 13 damages?

11:50:25 14 A. Over 25.

11:50:28 15 Q. In all of those cases, were you working for the accused  
11:50:32 16 infringer or the patentholder?

11:50:33 17 A. It's been about 50/50 over the last 21 years; half the  
11:50:39 18 time working for patentholders and half the time working  
11:50:42 19 for Defendants in actions like this.

11:50:46 20 Q. And have you ever given an opinion about damages in a  
11:50:48 21 patent case relating to mobile games?

11:50:50 22 A. I have.

11:50:51 23 Q. Thank you.

11:50:53 24 MS. LUDLAM: Your Honor, we proffer Dr. Becker as  
11:50:56 25 an economic expert qualified to opine about patent

11:51:00 1 infringement damages and reasonable royalties in this case.

11:51:04 2 THE COURT: Is there an objection?

11:51:06 3 MR. DACUS: No objection, Your Honor.

11:51:08 4 THE COURT: Then, without objection, the Court  
11:51:10 5 will recognize Dr. Becker as an expert witness in these  
11:51:13 6 identified fields.

11:51:13 7 Please continue.

11:51:14 8 Q. (By Ms. Ludlam) Dr. Becker, have you been compensated  
11:51:17 9 for your work on this case?

11:51:18 10 A. Yes.

11:51:18 11 Q. And what is your hourly rate?

11:51:20 12 A. I bill in this case at my standard hourly rate of  
11:51:23 13 \$675.00 an hour.

11:51:24 14 Q. Do you have any financial interest in the outcome of  
11:51:26 15 this case?

11:51:26 16 A. No.

11:51:27 17 Q. Can you please explain to the jury what your assignment  
11:51:30 18 was in this case?

11:51:31 19 A. So my assignment generally was to come up with an  
11:51:36 20 opinion about the damages that GREE has suffered from  
11:51:39 21 Supercell's alleged infringement. More specifically, the  
11:51:45 22 sort of patent damages world works from a definition that  
11:51:48 23 says that the damages should be adequate to compensate for  
11:51:53 24 the infringement but in no event less than a reasonable  
11:51:57 25 royalty.

11:51:58 1 Q. And is that what we're looking at here?

11:52:00 2 A. Yes. So this is the section of the U.S. Code on  
11:52:04 3 damages in patent cases.

11:52:05 4 Q. Could you please give the jury a high-level summary of  
11:52:09 5 your opinions regarding the reasonable royalties in this  
11:52:12 6 case?

11:52:12 7 A. Yes. So the first aspect of my opinion is that I think  
11:52:16 8 it's appropriate to look at the different game elements  
11:52:19 9 that are accused and have a separate royalty for each one  
11:52:24 10 because they're really different inventions, and the  
11:52:28 11 valuation of them is different.

11:52:29 12 So I've come up with a royalty for each of the  
11:52:34 13 four accused features and essentially four groups of  
11:52:37 14 patents.

11:52:40 15 Within those four groups, the Clash of Clans, '594  
11:52:46 16 patent royalty would be .7 percent of the U.S. revenue from  
11:52:50 17 Clash of Clans.

11:52:51 18 For Clash Royale, the card donation '655 patent,  
11:52:55 19 is 1.1 percent.

11:52:57 20 For Clash Royale, the Elixir, '137/'481 patents,  
11:53:02 21 are 1.6 percent royalty.

11:53:04 22 And for Brawl Stars, it's 2.4 percent.

11:53:08 23 Q. And did you have a second part -- part to your opinion,  
11:53:14 24 Dr. Becker?

11:53:14 25 A. Well, all of these are what we call a running royalty,

11:53:17 1 and I'll explain that a little more later, that this is a  
11:53:20 2 percentage of the revenue earned by Supercell during the  
11:53:24 3 period of time that there is a finding that they have  
11:53:27 4 infringed each of these patents.

11:53:29 5 Q. And can you explain for the jury what a royalty is in  
11:53:33 6 this context?

11:53:34 7 A. Yes. I like to sort of use an analogy of rent; that if  
11:53:39 8 you owned a piece of real property, like an apartment  
11:53:43 9 building, and you wanted to give somebody permission to  
11:53:46 10 move into one of the apartments and use that piece of  
11:53:50 11 property, you would want to charge them, obviously,  
11:53:54 12 something for that. And, typically, a landlord and a  
11:53:57 13 tenant relationship, you enter into what we call a lease  
11:54:01 14 agreement -- everybody has probably had one of those -- and  
11:54:03 15 you pay rent on a monthly basis.

11:54:06 16 The analogous thing in the intellectual property  
11:54:12 17 and patent world is that instead of a landlord and a  
11:54:13 18 tenant, you have a licensor, the patent owner who owns the  
11:54:15 19 property, and they are allowing somebody to use that  
11:54:18 20 technology, that's the licensee.

11:54:20 21 And instead of a rental agreement or a lease  
11:54:22 22 agreement, they typically call the agreements that govern  
11:54:28 23 patents a license agreement. And instead of monthly rent,  
11:54:31 24 there is some form of royalty paid for the use of that  
11:54:35 25 property.

11:54:36 1 Q. And how do you determine what a reasonable royalty  
11:54:39 2 would be in a case such as this?

11:54:41 3 A. So in the typical way in the patent damages world that  
11:54:46 4 we figure out what a reasonable royalty is, is to imagine a  
11:54:51 5 negotiation between GREE and Supercell. Now, it didn't  
11:54:56 6 really happen; it obviously didn't happen. So we call this  
11:55:00 7 a hypothetical negotiation.

11:55:03 8 I sort of put myself in -- back in time and ask  
11:55:07 9 the question: If Supercell and GREE had actually sat down  
11:55:11 10 to negotiate a license for these patents, what would be a  
11:55:16 11 reasonable outcome of that negotiation?

11:55:19 12 Q. And are there certain assumptions that you have to make  
11:55:22 13 when considering the hypothetical negotiations?

11:55:23 14 A. Yes. There are a few that are very specific to this  
11:55:26 15 hypothetical negotiation framework.

11:55:29 16 First, I assume that the parties to this  
11:55:33 17 negotiation know and accept that the patents are valid and  
11:55:36 18 enforceable and that they are infringed.

11:55:39 19 So they're not sitting at the table saying, well,  
11:55:42 20 we're not sure we need this license. They're sitting at  
11:55:45 21 the table saying, we absolutely understand that we need a  
11:55:48 22 license, and we'd like to negotiate for that and figure out  
11:55:51 23 what would be reasonable. So they're willing to make this  
11:55:56 24 negotiation.

11:55:56 25 There's also an element of knowledge about the

11:56:00 1 facts that we sometimes describe this as a negotiation  
11:56:04 2 where the cards are dealt face-up.

11:56:06 3 So there may be things that Supercell knows that  
11:56:09 4 in a real negotiation they wouldn't ever tell GREE, and  
11:56:12 5 vice versa. But the parties to this negotiation are  
11:56:15 6 assumed to essentially know everything that's relevant.

11:56:18 7 And the last is that both sides will act in good  
11:56:23 8 faith to reach an agreement.

11:56:25 9 Q. What about the timing of this negotiation, when does  
11:56:27 10 that occur?

11:56:28 11 A. So the timing of this is triggered by essentially the  
11:56:31 12 first need for a license, and we call that the date of  
11:56:34 13 first infringement.

11:56:35 14 In this case, the '594 patent, that date is June  
11:56:40 15 11th, 2018.

11:56:43 16 For the Clash Royale patents, that's March 28th,  
11:56:47 17 2017.

11:56:47 18 And for Brawl Stars, the '873 patent, that's  
11:56:52 19 December 12th, 2018.

11:56:54 20 Q. And how do we know what the parties would have  
11:56:56 21 considered at the hypothetical negotiation?

11:56:58 22 A. Well, the good news is that as a damages expert, I -- I  
11:57:02 23 have sort of a checklist that was provided by a patent case  
11:57:06 24 from many, many years ago. It's a case called the  
11:57:09 25 Georgia-Pacific case -- it was back in 1970 -- where the



11:57:15 1 Court in that case sort of laid out a set of 15 factors  
11:57:20 2 that are potentially relevant to determining the outcome of  
11:57:25 3 a negotiation.

11:57:26 4 It's not an absolute you must do exactly these 15  
11:57:30 5 steps, but it's more of a checklist to say these are the  
11:57:35 6 kinds of things that people would think about when they  
11:57:38 7 were trying to negotiate for a patent license, and then I  
11:57:41 8 use that as a checklist to see whether the evidence in this  
11:57:43 9 case matches up with any of these particular factors.

11:57:46 10 Q. Thank you.

11:57:47 11 And what evidence do you consider when thinking  
11:57:50 12 about all of these factors?

11:57:51 13 A. So there's a lot of information in a case like this,  
11:57:53 14 and this case was no different; lots of documents,  
11:57:59 15 depositions like the ones we've seen.

11:58:02 16 There's also a very large amount of very detailed  
11:58:07 17 data about these games; user-level data, financial data,  
11:58:10 18 financial statements that tell me literally on a daily  
11:58:14 19 basis and by individual player how much money Supercell has  
11:58:20 20 made from each of these games.

11:58:22 21 Q. And when considering all of that evidence, were all of  
11:58:26 22 the Georgia-Pacific factors important?

11:58:28 23 A. No. It turns out -- and it's not -- not uncommon at  
11:58:33 24 all that each case you have certain things that become the  
11:58:36 25 most important elements of that case.

11:58:38 1 Here, I -- out of those 15 factors, I like to  
11:58:44 2 group these into what I call economic and technical  
11:58:48 3 considerations, sort of the economics of these games and  
11:58:50 4 the technology of how the -- how this technology impacts  
11:58:55 5 the gameplay turn out to be the most important things.

11:58:58 6 And the factors that I've highlighted here are the  
11:59:01 7 ones that typically fall into this economic and technical  
11:59:05 8 considerations, like the one in the upper right, say  
11:59:08 9 Factor 8, is profitability and commercial success of the  
11:59:12 10 products, the games themselves.

11:59:16 11 Q. And so what's the first thing that you looked at in  
11:59:19 12 terms of these economic and technical considerations?

11:59:21 13 A. So the first thing was to just kind of get a sense of,  
11:59:27 14 all right, what are these games and are they successful, in  
11:59:31 15 particular looking in the United States, are they  
11:59:33 16 successful in this market, what kind of revenues do they  
11:59:36 17 generate, are they profitable?

11:59:38 18 And so I took data from Supercell that they  
11:59:41 19 produced for each of these three games and aggregated it  
11:59:45 20 across the time period that they're accused of infringing.  
11:59:50 21 And what I found, and what we see on this slide here, is  
11:59:53 22 that these games are very successful.

11:59:55 23 The Clash of Clans, for example, that time period  
11:59:59 24 is just about two years. I think it's one month more than  
12:00:03 25 two years. And we can see they've made 587 million in

12:00:08 1 gross revenue and about 180 million in profits.

12:00:13 2 Similar, but not as large statistics, for the  
12:00:19 3 other games.

12:00:20 4 MS. LUDLAM: Mr. Groat, could you please pull up  
12:00:24 5 PTX-689?

12:00:29 6 Q. (By Ms. Ludlam) And Dr. Becker, is this the revenue  
12:00:31 7 information that Supercell produced?

12:00:33 8 A. So this is some -- part of a series of spreadsheets  
12:00:37 9 that were produced that have daily revenues in the U.S. We  
12:00:45 10 can see -- what we're looking at here is Clash Royale.  
12:00:48 11 We've got gross and net revenue by day. And we had that  
12:00:52 12 for every game.

12:00:53 13 Q. And is this a spreadsheet that you used to create the  
12:00:55 14 slide that we were just looking at?

12:00:58 15 A. Yes.

12:01:01 16 MS. LUDLAM: We can take that down, Mr. Groat.  
12:01:03 17 Thank you.

12:01:04 18 Q. (By Ms. Ludlam) What else is important about the  
12:01:06 19 economics of these games?

12:01:07 20 A. So another important element of my analysis was to  
12:01:10 21 recognize that this -- these games fall into a category of  
12:01:15 22 online gaming called freemium games that are free to play,  
12:01:23 23 but you have an opportunity to spend money within the game.

12:01:28 24 And that's -- there's -- there's a lot written  
12:01:30 25 about this whole -- this psychology of freemium games, is

12:01:35 1 you think, well, it's free. Why -- how -- how could they  
12:01:38 2 make a half a -- \$500 million on a game that's free to  
12:01:43 3 play? But there's a whole science to and -- and sort of  
12:01:47 4 business model of presenting people with something that's  
12:01:49 5 free but then giving them opportunities to spend money  
12:01:52 6 within the game.

12:01:53 7 The second element that is important to my  
12:01:57 8 analysis is to recognize that a hundred percent of the  
12:02:00 9 revenue comes from a relatively small percentage of paying  
12:02:05 10 players. On -- on any given day, the number of payers --  
12:02:10 11 players that are paying is pretty small within these games.

12:02:13 12 And so the business model really then turns on  
12:02:20 13 finding ways to engage those players generally and turn  
12:02:26 14 them into paying players and get them to sort of remain in  
12:02:30 15 that process and habit of paying money within the game.

12:02:35 16 Q. And is that what is depicted here?

12:02:37 17 A. Yes. And so, you know, you've got millions and  
12:02:42 18 millions of people that play these games and a much smaller  
12:02:44 19 percentage at any given point in time who are actually  
12:02:47 20 paying. And so the business model becomes how -- what are  
12:02:51 21 the things that can motivate players to spend more money in  
12:02:54 22 the game?

12:02:55 23 Q. And did you see any evidence that tells you how  
12:02:58 24 Supercell and other mobile game developers make the  
12:03:03 25 freemium model work?

12:03:04 1 A. Yes, number of things.

12:03:06 2 Q. Can you please tell us about those?

12:03:08 3 A. So this is one of a number of articles that I've looked  
12:03:13 4 at that talk about the freemium business model, and I  
12:03:16 5 pulled this one out because it mentions a couple of things  
12:03:19 6 that we also saw in Mr. Peltola's testimony that was just  
12:03:22 7 shown.

12:03:23 8 They say that engagement is the key accelerator  
12:03:27 9 for freemium services, usually games. So it's getting the  
12:03:31 10 player engaged.

12:03:33 11 And there at the end, we'll talk about this a  
12:03:36 12 little more later, but these applications use what this  
12:03:40 13 author is calling micro-triggers for you to keep using the  
12:03:45 14 app.

12:03:45 15 So there can be little things within the game that  
12:03:47 16 kind of get you hooked and keep you going within the game.  
12:03:52 17 It isn't necessarily big, huge things that affect the  
12:03:56 18 psychology of continuing to play.

12:03:59 19 Q. And what else did you find with respect to player  
12:04:01 20 engagement?

12:04:02 21 A. So if we go to the next slide.

12:04:03 22 Q. Uh-huh.

12:04:09 23 A. The other thing I found is generally these measures of  
12:04:12 24 engagement and activity within -- within the game really  
12:04:15 25 reduce somewhat to the equation that time in the game is a

12:04:20 1 driver of revenue. It's another way of thinking about  
12:04:25 2 engagement, or a way to measure engagement is the amount of  
12:04:29 3 time somebody spends in the game.

12:04:31 4 And we see here Mr. Peltola agreeing that session  
12:04:35 5 time during the game relates to revenue.

12:04:38 6 And we'll -- I've -- I've done some more analysis  
12:04:42 7 of that.

12:04:42 8 Q. Okay. Let's talk about that, please.

12:04:44 9 A. So the -- this -- this slide is just my last sort of  
12:04:48 10 general industry evidence, and, again, this is another  
12:04:51 11 article talking specifically about Clash of Clans and its  
12:04:56 12 success and how it's one of the most successful freemium  
12:04:59 13 games out there. And as they say at the end here,  
12:05:04 14 Supercell gave another meaning to the expression "time is  
12:05:07 15 money."

12:05:08 16 Q. And did you do any independent analysis to investigate  
12:05:15 17 this relationship between time and money?

12:05:18 18 A. Yes, I did. So at this point, I -- I've got this sort  
12:05:22 19 of general idea that spending more time in the game equates  
12:05:25 20 to more money, and that's fairly logical. But I needed a  
12:05:29 21 way to actually measure that and be able to use it in my  
12:05:33 22 valuation.

12:05:33 23 So I did some -- some analysis of that.

12:05:37 24 Q. Can you explain to the jury your analysis?

12:05:39 25 A. Yes. So what I've got here is just a general graph

12:05:43 1 that would say, okay, I want to figure out how is time  
12:05:48 2 spent playing the game related to money spent?

12:05:52 3 And if I have individual user data -- say here  
12:05:57 4 I've just depicted -- let's say I have some information  
12:06:00 5 about Player No. 1 who spent a small amount of time in the  
12:06:04 6 game. And I can say, well, how much money did that player  
12:06:07 7 spend? And we put that on the graph.

12:06:10 8 Then I go look at Player 2. Player 2 spent quite  
12:06:14 9 a bit more time in the game. And let's look at how much  
12:06:16 10 money Player 2 spent and so on and so on.

12:06:22 11 And once I've got enough data points, I can use a  
12:06:26 12 computer -- statistical technique called regression  
12:06:30 13 analysis to figure out the relationship between time spent  
12:06:34 14 playing the game and whether -- whether there's any more  
12:06:36 15 spending and how much.

12:06:37 16 Q. Okay. Is that what you did with the games at issue in  
12:06:41 17 this case?

12:06:41 18 A. Yes, this -- essentially, this is exactly what I did,  
12:06:46 19 but there's way too many data points for me to put on a  
12:06:49 20 graph. There are millions of data points.

12:06:52 21 Q. Okay. Let's talk about what your analysis shows.

12:06:55 22 Can you explain that a little bit?

12:06:56 23 A. So if we go to this slide, this is the output from the  
12:06:59 24 computer program that I used to analyze Clash of Clans.  
12:07:04 25 It's called a linear regression analysis. And it looks at

12:07:12 1 the relationship between not only time in the game but a  
12:07:15 2 couple of other -- couple of other factors to try and  
12:07:19 3 isolate the impact of session time, i.e., how much time in  
12:07:24 4 each month does a user spend in the game, and relate that  
12:07:29 5 to the amount of spending that each user did.

12:07:31 6 In the upper right-hand corner, you'll see I've  
12:07:34 7 highlighted something called number of obs. That means  
12:07:40 8 number of observations. For Clash of Clans, I had over 14  
12:07:43 9 million individual user months. Each data point was one  
12:07:48 10 user for one month within Clash of Clans.

12:07:52 11 And what I found was that there was a very strong  
12:07:54 12 relationship, very precise relationship that every  
12:07:59 13 1 percent change in the amount of time a user spent in the  
12:08:05 14 game was related to a .21 percent change in the amount of  
12:08:11 15 spending.

12:08:12 16 So to put that in more realistic terms, if  
12:08:16 17 somebody doubles the amount of time they spend, that's a  
12:08:19 18 hundred percent change in time. That would be a 21 percent  
12:08:22 19 increase in spending.

12:08:24 20 Q. And are there measures that statisticians use to  
12:08:27 21 confirm the -- that the numbers you have here are valid and  
12:08:32 22 reliable?

12:08:32 23 A. Yeah, sometimes relationships -- when -- you know, if  
12:08:35 24 we only have 10 or 20 data points, the relationship is a  
12:08:39 25 little weak and a little fuzzy. You're going, awe, you



12:08:43 1 know, it sort of looks like the line goes through here.

12:08:47 2 Because we've got 14 million data points here, the  
12:08:50 3 measurement is very precise. We call that a level of  
12:08:52 4 statistical confidence in this result. And this one is  
12:08:56 5 99.999 -- you know, many 9s out there in terms of  
12:09:00 6 confidence, which is way more than you typically have in a  
12:09:04 7 statistical analysis.

12:09:05 8 Q. And where is that confidence interval represented on  
12:09:09 9 this?

12:09:09 10 A. So the -- the line that I've highlighted, we can see 95  
12:09:12 11 percent confidence interval is over on the right. We can  
12:09:16 12 see that that -- that means that that .211, I'm 95 percent  
12:09:22 13 sure that that measure, which is the best estimate of it,  
12:09:26 14 falls between .2105 and .21167. So it's essentially saying  
12:09:37 15 that's measured with a high, high degree of precision.

12:09:41 16 MS. LUDLAM: And, Mr. Groat, could you pull up as  
12:09:44 17 an example PTX-426?

12:09:46 18 Q. (By Ms. Ludlam) This looks rather daunting.

12:09:51 19 Dr. Becker, can you explain what it is that we're  
12:09:52 20 looking at here?

12:09:53 21 A. So, yes, this is 25 lines out of the 14 million lines  
12:09:59 22 that I had for -- just for Clash of Clans. Oops, it's  
12:10:07 23 flashing, but...

12:10:13 24 MS. LUDLAM: We don't have to scroll, Mr. Groat.  
12:10:15 25 That's okay.

12:10:17 1 Q. (By Ms. Ludlam) And is this the kind of data that you  
12:10:20 2 use to input in your regression analysis?

12:10:21 3 A. Yes, so there it's stabilized. We can see this.

12:10:24 4 I got for each player in each month the -- the  
12:10:28 5 individual data for them that includes the revenue and the  
12:10:30 6 duration of their time in the game. And this -- this  
12:10:34 7 got -- this came in many, many files, and I had to pull it  
12:10:42 8 up into the computer into the 14 million line item data  
12:10:44 9 set.

12:10:44 10 Q. Great. And you reviewed PTX- --

12:10:46 11 MS. LUDLAM: Thank you, Mr. Groat. If you'd take  
12:10:49 12 that down.

12:10:50 13 Q. (By Ms. Ludlam) You reviewed PTX-426 through 444, and  
12:10:55 14 that's what's represented in this chart here; is that  
12:10:57 15 correct?

12:10:57 16 A. Yes.

12:10:57 17 Q. Okay. Great. And what about the other games? Did you  
12:11:00 18 do something similar for those?

12:11:02 19 A. I did an identical analysis for the other two games,  
12:11:06 20 and for -- if we go forward a slide, for --

12:11:10 21 MS. LUDLAM: Mr. Groat, can you advance the slide  
12:11:13 22 for me, please? Thank you.

12:11:15 23 A. Okay. For Clash Royale, you can see in the upper  
12:11:18 24 right, I had about 6.7 million data points. And the  
12:11:22 25 relationship here is a little flatter. It's -- instead of

12:11:26 1 21 percent change for a hundred percent increase in time,  
12:11:30 2 it's a 16.9 percent.

12:11:32 3 So .169 for every 1 percent change.

12:11:36 4 Q. (By Ms Ludlam) Okay. And how about for Brawl Stars?

12:11:40 5 A. For Brawl Stars, it's actually higher than Clash of  
12:11:43 6 Clans. It's .2576. This is based on analyzing 1.6 million  
12:11:49 7 individual user months.

12:11:50 8 Q. Okay. And, Dr. Becker, you used PX-355 through PTX-391  
12:12:03 9 to feed into these regression analyses, correct?

12:12:06 10 A. Yes.

12:12:07 11 Q. Okay. Thank you.

12:12:08 12 THE COURT: Let me interrupt, counsel. This is  
12:12:10 13 probably as good a place as any for us to break for lunch.

12:12:13 14 Ladies and gentlemen, this witness is going to go  
12:12:15 15 some considerable length of time, and we're close to 12:15  
12:12:19 16 already.

12:12:19 17 The clerk's office has informed me that your lunch  
12:12:23 18 is ready for you in the jury room.

12:12:25 19 If you will take your notebooks with you over the  
12:12:27 20 lunch break, follow all the instructions I've given you,  
12:12:31 21 including not to discuss the case among yourselves, we'll  
12:12:35 22 try to reconvene as close to 1:00 o'clock as we can.

12:12:39 23 With those instructions, the jury is excused for  
12:12:42 24 lunch.

12:12:43 25 COURT SECURITY OFFICER: All rise.

12:12:45 1 (Jury out.)

12:12:45 2 THE COURT: Please be seated.

12:13:02 3 Are you having trouble with your slide advancer --

12:13:09 4 MS. LUDLAM: Yes.

12:13:10 5 THE COURT: -- Ms. Ludlam?

12:13:12 6 MS. LUDLAM: Yes, I am, Your Honor.

12:13:14 7 THE COURT: Maybe you can get that fixed over the  
12:13:17 8 lunch break.

12:13:18 9 MS. LUDLAM: I hope so. Thank you.

12:13:19 10 THE COURT: Counsel, I'm going to order that you  
12:13:21 11 meet and confer and submit jointly to the Court by 6:00  
12:13:26 12 o'clock tomorrow evening, Tuesday evening, a revised final  
12:13:30 13 jury instruction and verdict form.

12:13:31 14 In light of the evidence that's been produced and  
12:13:34 15 considering what you've previously submitted, I think  
12:13:38 16 that's appropriate.

12:13:38 17 I'd like you to also be sure that that's furnished  
12:13:41 18 to my staff in a Word form. But I'll look for that to be  
12:13:45 19 submitted jointly with any competing and disagreed  
12:13:48 20 provisions in a different font or somewhere where they are  
12:13:52 21 side-by-side or one follows the other, and they're easily  
12:13:55 22 identifiable. And do that by 6:00 p.m. tomorrow evening.

12:13:58 23 All right. We're going to recess for lunch, and  
12:14:01 24 we'll attempt to reconvene at 1:00 o'clock.

12:14:04 25 Is there anything from either side before we

12:14:06 1 recess?

12:14:07 2 MR. MOORE: Nothing for us, Your Honor. Thank  
12:14:09 3 you.

12:14:09 4 MR. DACUS: Your Honor, I have one question, if I  
12:14:11 5 might, to avoid any surprise to the Court and more  
12:14:14 6 importantly to myself.

12:14:15 7 THE COURT: Yes, sir.

12:14:16 8 MR. DACUS: When I cross-examine Dr. Becker, I  
12:14:19 9 anticipate that I might use the flip chart. Is it okay if  
12:14:22 10 I pull that forward slightly so that the witness and the  
12:14:25 11 jury can see it?

12:14:26 12 THE COURT: If slightly means not further than the  
12:14:29 13 front of the podium, that's no problem. If you want to go  
12:14:31 14 further than the podium, then you need to show me where,  
12:14:35 15 and we need to talk about it.

12:14:37 16 MR. DACUS: I -- my belief is -- and I'll check  
12:14:39 17 over the lunch hour -- my belief is if I could just pull it  
12:14:42 18 forward even with the document camera, that would be  
12:14:45 19 sufficient.

12:14:45 20 THE COURT: That's not a problem, Mr. Dacus. If  
12:14:47 21 you want to do something differently, let me know.

12:14:49 22 MR. DACUS: Thank you, Your Honor.

12:14:50 23 THE COURT: All right. Counsel, we stand in  
12:14:51 24 recess for lunch.

12:14:52 25 COURT SECURITY OFFICER: All rise.

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(Recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

9/14/2020  
Date